The Complete Anti-Federalist

Edited, with Commentary and Notes, by
Herbert J. Storing

With the Assistance of Murray Dry

VOLUME 3

Pennsylvania

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For convenient cross reference, and without any other editorial purpose, a three-part number has been assigned to each paragraph (or group of paragraphs where they are brief) of the writings assembled in *The Complete Anti-Federalist*. The first number denotes the volume, the second the position of the essay or series within that volume, and the third the paragraph. A reference to, for example, Federal Republican 3.16.13 locates a passage in the Review of the Constitution Proposed by the Late Convention, by A Federal Republican, which can be found in volume 3 of this edition. These numbers are distinct from any numbering by the authors themselves or any of their publishers; Centinel III, 2.7.73 refers to the third letter of Centinel, in volume 2 above. The abbreviation "intro." is used for Storing's introductions to volumes or parts of volumes as well as the introductions to individual texts. A reference to, say, 2.8.intro. denotes the introductory sketch and outline of the Federal Farmer, located in volume 2. Cross references to volume 1 are by page number. A cross reference from one note to another uses a three-part number plus a note number, so that the reader may refer to the text as well as the note if necessary.

Murray Dry

Works Frequently Cited

John Adams, *Works*	*The Works of John Adams*, ed. Charles Francis Adams (Boston 1851)
Blackstone, *Commentaries*	William Blackstone, *Commentaries on the Laws of England* (1765–69)
Crosskey, *Politics and the Constitution*	William W. Crosskey, *Politics and the Constitution in the History of the United States* (Chicago 1953)
Curtis, *Constitutional History*	George Ticknor Curtis, *Constitutional History of the United States: From Their Declaration of Independence to the Close of the Civil War* (New York 1889)
Documentary History of the Constitution	*A Documentary History of the Constitution of the United States of America, 1786–1870; Derived from the Records, Manuscripts, and Rolls Deposited in the Bureau of Rolls and Library of the Department of State* (Washington, D.C., 1894–1905)
Elliot	*The Debates of the State Conventions on the Adoption of the Federal Constitution, as Recommended by the General Convention at Philadelphia in 1787*, 2d ed., ed. Jonathan Elliot (Philadelphia 1866)
Evans, *Early American Imprints*	Charles Evans, *Early American Imprints, 1639–1800* (Worcester, Mass., 1955–)
Farrand	*The Records of the Federal Convention of 1787*, ed. Max Farrand (New Haven 1911–37)
The Federalist	*The Federalist*, ed. Jacob E. Cooke (Middletown, Conn., 1961)
Ford, *Essays*	*Essays on the Constitution of the United States, Published during Its Discussion by the People*,

	1787–1788, ed. Paul Leicester Ford (Brooklyn, N.Y., 1892)
Ford, *Pamphlets*	*Pamphlets on the Constitution of the United States, Published during Its Discussion by the People, 1787–1788,* ed. Paul Leicester Ford (Brooklyn, N.Y., 1888)
Lee, *Letters*	*The Letters of Richard Henry Lee,* ed. James Curtis Ballagh (New York 1911–14)
Lincoln, *Collected Works*	Abraham Lincoln, *Collected Works,* ed. Roy P. Basler (New Brunswick, N.J., 1953)
Lincoln, *Speeches and Writings*	*Abraham Lincoln: His Speeches and Writings,* ed. Roy P. Basler (Cleveland and New York 1946)
Madison, *Writings* (ed. Hunt)	*The Writings of James Madison,* ed. Gaillard Hunt (New York 1900–1910)
McMaster and Stone	*Pennsylvania and the Federal Constitution, 1787–1788,* ed. John Bach McMaster and Frederick D. Stone (Published for the Subscribers by the Historical Society of Pennsylvania, 1888)
Peters	Peters' United States Supreme Court Reports
Thorpe, *Federal and State Constitutions*	*The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies Now or Heretofore Forming the United States of America,* comp. Francis Newton Thorpe (Washington, D.C., 1931–44)
Washington, *Writings*	*The Writings of George Washington from the Original Manuscript Sources, 1745–1799,* ed. John C. Fitzpatrick (Washington, D.C., 1931–44)

Pennsylvania

Introduction

The first state to take action on the Constitution was Pennsylvania, where sharp party divisions centered upon the state's 1776 constitution, which established what one historian called "the first triumph of democracy" and another "the most democratic form of government ever tried by an American state."[1] The government was one of legislative dominance—the traditional form in the Proprietary regime—a multiple and weak executive, and a judiciary dependent on the legislature. The defenders of this constitution, the "Constitutionalists," later Anti-Federalists, saw it as the means of protecting the ordinary people of Pennsylvania, particularly the farm people, from the wealthier, better educated, better connected commercial and propertied classes. The opponents, the "Republicans," saw it as defective in principle, because of its lack of provision for stability and balance, and as illiberal and undemocratic in practice.[2] Additional objects of contention were the severe test oaths required of citizens by the constitution and subsequent legislation, and the Bank of North America, whose Pennsylvania charter was abruptly repealed by the Constitutionalist-controlled legislature leading to a Republican legislative victory in 1786. Political power alternated between these groups—often by popular response to excessive partisanship and vindictiveness on one side or the other—with the Republicans increasingly looking to a more energetic federal government, while the Constitutionalists remained steadfastly local. Samuel Bannister Harding describes the situation in Pennsylvania on the eve of the ratification debate as follows:

> In the State were two parties, embittered by a dozen years of violent struggle. On the one side, and for the moment in power, stood the greater proportion of the men of property, of education, of large ideas, and federal views; six of the eight delegates sent by the State to the Federal convention had come from their number, and the other two—Franklin and Ingersoll—if not neutral, were at most but moderate Constitutionalists. On the other side the leadership had been assumed by men of obscure birth, of little education or property, and of the narrowest views. Small wonder, then, that the cause espoused by the first met with the violent condemnation of the second, and that the contest which ensued was unprecedented in virulence and animosity.[3]

Moving very quickly, the Republican-controlled legislature called for a convention to meet on 20 November. While they did not achieve for Pennsylvania the honor of being the first state to ratify—Delaware having unanimously ratified on 7 December—the Pennsylvania convention acceded to the Constitution on 12 December by the substantial margin of 46 to 23. The Pennsylvania Anti-Federalists remained unreconciled, however, and continued to press their attack on the Constitution, providing much material for the debate in other states.

1. Douglass, *Rebels and Democrats* 214. Samuel Bannister Harding, "Party Struggles over the First Pennsylvania Constitution," *Annual Report of the American Historical Association for the Year 1894* (Washington, D.C., 1895) 376. See also Harry Marlin Tinkcom, *The Republicans and Federalists in Pennsylvania 1790–1801* (Harrisburg 1950) 1; and David Hawke, *In the Midst of a Revolution* (Philadelphia 1961). For a general background in Pennsylvania see, in addition to the above, Brunhouse, *The Counter Revolution in Pennsylvania, 1776–1790;* Paul Leicester Ford, "The Adoption of the Pennsylvania Constitution of 1776," *Political Science Quarterly* September 1895; Jensen, *New Nation;* Charles H. Lincoln, *The Revolutionary Movement in Pennsylvania, 1760–1776* (Philadelphia 1901); McDonald, *We the People;* McDonald, *E Pluribus Unum;* Allan Nevins, *The American States during and after the Revolution, 1775–1789* (New York 1924); J. Paul Selsam, *The Pennsylvania Constitution of 1776* (Philadelphia 1935).

2. McDonald may exaggerate when he says that in the Pennsylvania ratifying convention it was Wilson who argued on democratic grounds and Smilie and Findley who took the ground of republican principle; but there is enough truth in this view to seriously qualify and complicate the common terms of the arguments about the degree of "democracy" in both the Pennsylvania and the U.S. constitutions. See *We the People* 165.

3. Harding, *Annual Report of the American Historical Association 1894* 391.

Speech of William Findley in the Pennsylvania Assembly

28 September 1787

On 28 September 1787, only eleven days after the adjournment of the Constitutional Convention, before the Congress had concluded its consideration of the proposed Constitution and during the waning days of the session of the Pennsylvania Assembly, George Clymer proposed to the latter body that elections be held the next month to select delegates for a state convention to consider the Constitution. Robert Whitehill immediately moved for a postponement until the next session; this was discussed and soundly defeated. Hugh Brackenridge then argued that there was no need to wait for Congress to act, contending that he had "not been able to discover any principle on which an idea of this nature can be founded."[1] In the speech printed here, William Findley attempted to provide that principle.[2] Findley, second in ability only to George Bryan among the Anti-Federalists and, like him (and John Smilie, another Anti-Federalist leader in Pennsylvania), born in Ireland, was a leading western Constitutionalist. He later bore the brunt of the opposition in the Pennsylvania ratifying convention, to which Bryan was not elected, and produced a series of Anti-Federal essays as An Officer of the Late Continental Army.[3]

Findley urged that Pennsylvania should stand, as she had stood in the past, on the rock of legitimacy, which was the rock of federalism. The argument is essentially that the ratification should follow the course laid down in the Articles of Confederation rather than that laid down in the Constitution. This was an appropriate Anti-Federalist argument so long as there was some possibility of adhering to the established conventions; but there never was much chance of that, and consequently the more common Anti-Federalist argument was not Findley's but, for example, Cato's, which emphasized the *illegality* of the Convention, the need for a recourse to the original authority of the people to legitimize the Constitution, and the consequent need for due deliberation in taking such a fundamental step.[4] The Pennsylvania Anti-Federalists themselves made the same argument once it was clear that the established channels of legitimacy had been breached.[5]

1. See McMaster and Stone 40; for the full report of this debate see ibid. 27–72, and n. 2 below.

2. The speech is reprinted from *Proceedings and Debates of the General Assembly of Pennsylvania*, Taken in short-hand by Thomas Lloyd (Philadelphia 1787) I, 125–28.
3. See below, 3.8. Little has been written about Findley. See the biographical sketch by W. H. Egle in McMaster and Stone 727–30; and Asa E. Martin, "William Findley," *Dictionary of American Biography* 385–86. See also the autobiographical letter printed as "William Findley of Westmoreland, Pennsylvania," *Pennsylvania Magazine of History and Biography* 5 (1881): 440–50.
4. See Cato II, 2.6.9.
5. See Pennsylvania House Minority 3.2.4–7.

3.1.1 I do not intend to reply to the arguments used in favour of the present measure—but only examine the ground on which we stand.—When the question was on postponement, I did not think it right, that gentlemen should have introduced the observations which they did, nor that the manner of speaking, which some used, was proper.[1] It was only addressed to the passions, and in my reply I do not mean to justify such language, by using what may be similar. No, Sir, I intend to address the judgment, and not the passions of any man. I have, no doubt, *but a Convention might be called, and will be called. That it ought to be called, and will be called,* is seen so clearly, that I shall add nothing to enforce it—therefore, I take it—that the propriety of calling a convention is not the question before us. After declaring my sentiments so far, I shall proceed—Sir, now to examine the ground on which we stand—I believe we stand on foederal ground; therefore, we are not in a state of nature. If we were in a state of nature, all the arguments produced, for hastening this business, would apply—but as we are not, I would observe, that the most deliberate manner of proceeding, is the best manner—But the manner in which this subject has been introduced, is an indeliberate manner, and seems to argue, that we are not on foederal ground. The design of carrying this through, I say, Sir, is a presumption, that we are in a state of nature: if that is the case, then it can only be proper to use this expedition. What I mean, Sir, by a state of nature, is with respect to the confederation, or union of the states, and not any wise alluding to our particular state government. Now my opinion is, Sir, that we are on foederal ground—that the foederal convention was a foederal convention—that it had the powers of a foederal convention, and that they were limited to act foederally—that they have acted agreeable to the limitation, and have acted foederally. I know by some of the arguments which have been used, that some gentlemen suppose otherwise. Well then, Sir, we will have recourse to the confederation itself, and then to the law which appointed delegates to the convention, and let them decide whether we are on foederal ground or not.

3.1.2 The sixth article of the confederation says, "No two or more states shall enter into any treaty, confederation, or alliance whatever between them, without the consent of the United States in Congress assembled, specifying,

accurately, the purposes for which the same is to be entered into, and how long it shall continue." It may be said this don't apply—Well let us examine what it says further in the thirteenth article—"The articles of confederation shall be inviolably observed by every state, and the union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them, unless such alteration be agreed to in a congress of the United States, and be afterwards confirmed by the legislatures of every state." Now did we act in conformity with these articles by passing the law appointing delegates to the convention, or did we not? I say we did. I know the contrary has been said, but let us have recourse to our own act. I don't mean, as I said before, to reply particularly to any arguments, but to establish the point that we have all along acted upon foederal principles, and that we ought to continue foederal, and I have no doubt but we shall. But what says the preamble of the law—Hear our own words, Sir,—"Whereas the general assembly of this commonwealth, taking into their serious consideration the representations heretofore made to the legislatures of the several states in the union, by the United States in Congress assembled," &c. It has been mentioned that we took it up in consequence of Virginia's having engaged in the measure; and as the reasons are only mentioned in the preamble, they may not deserve much attention, but the second section of the law decides this point. The words are, after enumerating the persons, that they are hereby constituted and appointed deputies from this state, with powers to meet such deputies as may be appointed and authorized by the other states to assemble in the said convention at the city aforesaid, and to join with them in devising, deliberating on, and discussing all such alterations and further provisions as may be necessary to render the foederal constitution fully adequate to the exigencies of the Union; and in reporting such act or acts for that purpose, to the United States in Congress assembled, as when agreed to by them, and duly confirmed by the several states, will effectually provide for the same.[2]

Now I consider it as a question of importance, whether we are to take up 3.1.3
the new constitution, as being in a state of nature, or acting on federal ground, whether we stand unconnected or subordinate to the present confederation; if we are bound by that, it obliges us to continue on federal ground. I should conceive, that we are still bound by the confederation, and that the conduct of the House has hitherto been federal; that the convention was federal as appears by their appointment, and their report to Congress. Did they, Sir, address their report to this House? No, Sir, they did not. It is true, Sir, we were honored with a report from our own delegates. No, Sir, I retract the word—the delegates were honored; they did themselves the honour of communicating the result of their deliberations. But did the convention address this House? No, Sir, they did not. They addressed Congress, as they were ordered to do.—Hitherto the business has been in a federal channel, and this, Sir, is the first step that places us upon unfederal ground. The report is before Congress, and it is to be presumed Congress

will agree to it—but has such a length of time elapsed, as to induce us to suspect they will not concur, or to justify our going into it without their recommendation? We may act, Sir, without due deliberation, and hurry on without consideration, but Congress will not. I know the propriety of waiting to hear from them must have weight with every Member, and I ask every gentleman in this House, will they take upon themselves to doubt of the acquiescence of Congress, in order to furnish an argument for dispatch? If any will, let him say so, and take the consequences upon his character. No doubt can be entertained, but Congress will recommend, as the acquisition of power is a desirable object with them. Their disposition must be to promote the present plan, but they must wish to preserve the appearance of decency on such a subject. I ask, can any gentleman suppose but what Congress will come readily into it? They who have been many years recommending and requiring, nay I may say, begging for such powers as are now proposed to be given them, cannot change their disposition, and decline receiving an increase. Well, what does all this tend to prove; have we not all along been a federal state, remarkably so? And shall we be the first to step out of our way wantonly, and without any reason? Certainly we will not.[3]

3.1.4 However, I suppose some gentlemen will say, it is necessary for Pennsylvania to shew a ready compliance on the present occasion—that it is absolutely necessary to supercede the existing confederation. Why, Sir, we know that nothing, no argument, no opposition can withstand the plea of necessity—well, but the absolute necessity must arise from the dangers we are in. Now where are any dangers to be avoided while Congress are going only through their usual forms to recommend this measure? They must have time to read and consider the plan; it must go through the usual course of business. Circular letters must be prepared and sent with authenticated copies of the new form of government. I am of opinion all this will be done with proper speed, and the communications will be made as soon as possible. Why send the plan to Congress at all, if we must act upon it without their approbation. If the present confederation is not adequate to the great national purposes, it is fair to put it in competition with the proposed one. We know it was framed by good and wise men, and so was this. Wise and great men were employed in framing both. Nay, some of the same men prepared them—but as time and experience have shewn a revision to be necessary, has it not been entered into [on] a federal ground? And will the state of Pennsylvania quit this to answer the concealed purposes of those, who urge on the present measure? No, I hope not,—but they will agree to leave it to another House, by which time the usual formalities may be given it by the United States. Surely Pennsylvania can take it up early enough to prevent any damage that is feared. In doing so, we act federally. What are held out as inducements to act with such precipitation, as some Members say the *honor* of being foremost; but I would rather say the *dishonor* of

acting unfederally; and will any federal purposes be answered by a breach of the confederation, which can counterbalance the disgrace of being the first to dissolve the union? And, Sir, it is not convenient that one state should enter into this measure any length of time before the others. This is one reason of waiting the recommendation of Congress—for then the new constitution comes officially and all are prepared to go hand in hand in perfecting the work—but will a name justify us for a breach of faith unnecessarily, and no necessity is alledged to justify the measure. Sir, in acting the part I do in supporting federal measures, I am justified by every citizen, who will think with deliberation on a subject of this importance. I have supposed the gentlemen who support the resolutions before you, have some object in view which is not understood. I have a right for such suspicion, or why was it delayed to the last but one day of the sessions? We do not treat this subject which is allowed to be one of importance with any respect; we treat it rather as a matter of no importance, when we hurry it on in this manner. Why, Sir, even the trifling business of appointing a prothonotary, or register, is made the order of the day. Certainly then we treat this with indignity.

There must be some reasons for this, but though I cannot see it[,] I may 3.1.5
suppose it, and I would ask the gentleman whether it is that they may have the merit of promoting a business which appears to be very popular; but will this consist with our federal engagements. I would go further, and assign another reason against it, but I may be supposed to touch it with indelicacy. It may be asked, was this House elected with a view of entering into matters of this importance? I say this may be indelicate, as the House have elected delegates to convention—but then, Sir, I have shewed they had that right by the articles of confederation, so that the House so far did their duty.—It is true they happened in their choice of delegates, to choose a number of their own Members, but in this they were also justified for one reason; perhaps they thought them better judges of what would be for the benefit of a state they regulated by their legislation. I believe nothing was improper in this; but, I remember, it was lamented that some persons were not chosen better to represent the country interest. And it is these very men, who now come forward with the resolutions, they, no doubt, are able to decide; but I think they should indulge others with time, for a like consideration—therefore, I hope they will agree to let it lie over to the next House. I don't think that it will be then too late, and few or none of the other states can be forwarder than ourselves, in calling a convention.

1. Referring to the Federalist discussion of the merits of the Constitution and allusions to the character and motives of the Anti-Federalist leaders.

2. Farrand III, 565–66.

3. Mr. Hugh Brackenridge: "All efforts to restore energy to the federal government have proved ineffectual, when exerted in the mode directed by the 13th article of the confederation, and it is in consequence of this that recourse is once more had to the *authority of the people*. The first step toward obtaining this was anti-federal; the acquiescence of Congress was anti-federal; the whole process has been anti-federal so

far as it was not conducted in the manner prescribed by the articles of union. But the first and every step was *federal*, inasmuch as it was sanctioned by the PEOPLE OF THE UNITED STATES. The member from Westmoreland [Mr. Findley] pleases his fancy with being on federal ground, pursuing federal measures, and being a very federal sort of person; he concludes we are not in a state of nature, because we are on federal ground. But, Sir, we are not on federal ground, but on the wild and extended field of nature, unrestrained by any former compact, bound by no peculiar tie; at least so far are we disengaged as to be capable of forming a constitution which shall be the wonder of the universe. It is on the principle of self-conservation that we act. The former articles of confederation have received sentence of death, and though they may be on earth, yet are inactive, and have no efficacy." McMaster and Stone 58.

Address of the Minority of the Pennsylvania House of Representatives

4 October 1787

The Pennsylvania legislature did not proceed on Findley's federal ground but called for a convention to meet on 20 November. The Anti-Federalists tried to block action by boycotting the Assembly, but two of them were brought to the house by a group of Philadelphia citizens and retained there by the Federalists to make a quorum. The "Sixteen Seceders' " account of the action, together with their objections to the Constitution, was published in the *Pennsylvania Packet*, 4 October 1787, from which it is taken here; and it was quickly and widely reprinted. The author is identified by Konkle as George Bryan.[1] McMaster and Stone print several replies, the most substantial of which are essays by Pelatiah Webster and A Citizen of Pennsylvania.[2]

1. See Konkle, *George Bryan and the Pennsylvania Constitution, 1731–1791* 308. The Centinel essays and the "Address and Reasons of Dissent" of the Minority of the Pennsylvania ratifying convention, also said by Konkle to have been written by George Bryan, were in fact probably written by his son Samuel (see Centinel II, 2.7 intro. n. 4, and Pennsylvania Convention Minority 3.11.8 n. 2); but the son does not appear to have claimed the authorship of the address of the minority of the House of Representatives.
2. McMaster and Stone 89–113.

An Address of the Subscribers Members of the late House of Representatives of the Commonwealth of Pennsylvania to their Constituents.

Gentlemen,

When in consequence of your suffrages at the last election we were chosen to represent you in the General Assembly of this commonwealth, we accepted of the important trust, with a determination to execute it in the best manner we were able, and we flatter ourselves we acted in such a 3.2.1

manner as to convince you, that your interests with that of the good of the state has been the object of our measures.

3.2.2 During the fall a[nd?] spring sessions of the legislature, on the recommendation of the Congress of the United States, your representatives proceeded to the appointment of delegates to attend a convention to be held in the city of Philadelphia, for the purposes of revising and amending the present articles of confederation, and to report their proceedings to Congress, and when adopted by them, and ratified by the several states, to become binding on them as part of the confederation of the United States. We lamented at the time, that a majority of our legislature appointed men to represent this state who were all citizens of Philadelphia, none of them calculated to represent the landed interest of Pennsylvania, and almost all of them of one political party, men who have been uniformly opposed to that constitution for which you have on every occasion manifested your attachment.[1] We were apprehensive at the time, of the ill consequences of so partial a representation, but all opposition was in vain. When the convention met, members from twelve states attended, and after deliberating upwards of four months on the subject, agreed on a plan of government which was sent forward by them to Congress, and which was reported to the house by the delegates of Pennsylvania as mere matter of information, and printed in the newspapers of the city of Philadelphia; but the house had not received it officially from Congress, nor had we the least idea, that as the annual election was so near, we should be called upon to deliberate, much less to act on so momentous a business; a business of the utmost importance to you and your posterity. We conceived it required the most minute examination and mature consideration, and that it ought to be taken up by the next house. Judge then of our surprise on finding the last day but one in the sessions, a member of the house who had been a delegate in the convention [George Clymer], without any previous notice or any intimation of his intentions to the house, offer a resolution recommending the calling a convention to consider of the proposed constitution, and to direct the electing members for the same, at so early a period as the day of your annual election, thus attempting to surprise you into a choice of members—to approve or disapprove of a constitution, which, is to entail happiness or misery forever without giving time to the greatest part of the state even to see, much less to examine the plan of government.

3.2.3 Our duty to ourselves and our regard for your dearest interests induced us to oppose the measure by every possible argument that we could suggest at the time; but all our efforts were insufficient even to produce a postponement until the afternoon. We urged and urged in vain the constant practice of the house when any important business was to be brought on, of giving previous notice and making it the order of the day sometime before hand; that no bill, however trifling, was passed without three readings, and without this formality which gave the members time and opportunity to think on

the subject; that the rules were adhered to so strictly, that even the building of a bridge, or the laying out a road, could not be determined on without this form; but this, the most important of all matters, was to be done by surprise, and as we conceived with design to preclude you from having it in your power to deliberate on the subject. Our anxiety for your interests was great, but notwithstanding the firmest and most determined opposition, no respite could be obtained, and the first resolution was adopted by a majority of the house, when they adjourned till the afternoon to complete the business. In these circumstances we had no alternative, we were under a necessity of either returning to the house, and by our presence enabling them to call a convention before our constituents could have the means of information, or time to deliberate on the subject, or by absenting ourselves from the house, prevent the measure taking place. Our regard for you induced us to prefer the latter, and we determined not to attend in the afternoon. We conceived that at the time we were chosen you had no view to this business, and we could see no inconvenience nor loss of time from deferring a matter of such importance and which would in its consequences affect, or perhaps, annihilate our own constitution, as well as that of every constitution in the union to a house chosen after the people had some knowledge of the plan, especially as the next house will meet at so early a period, and a convention could be called by them time enough to meet in a few months, which would be as early as any state in the union, and would be allowing you time to make up your minds on a matter which appeared to us to require so much deliberation. Thus circumstanced and thus influenced, we determined the next morning, again to absent ourselves from the house, when James M'Calmont, esquire, a member from Franklin, and Jacob Miley, esquire, a member from Dauphin, were seized by a number of citizens of Philadelphia, who had collected together for that purpose, their lodgings were violently broken open, their cloaths torn, and after much abuse and insult, they were forcibly dragged through the streets of Philadelphia to the State house, and there detained by force, and in the presence of the majority, who had, the day before, voted for the first of the proposed resolutions, treated with the most insulting language; while the house so formed proceeded to finish their resolutions, which they mean to offer to you as the doings of the legislature of Pennsylvania. On this outrageous proceeding we make no comment. The inhabitants of Franklin and Dauphin have been grossly insulted by the treatment of their members.[2] We know the feelings of the people of these counties are sufficiently keen; it becomes us, not to add to them by dwelling longer on the subject; but as our conduct may, and we have no doubt, will be misrepresented, we thought it our duty to lay before our constituents, to whom alone we are accountable, a real state of facts; that they may judge for themselves. We need not tell you, that we could have no interested motive to influence our conduct. A sense of that duty which we owed to you and to ourselves, could have alone induced us to submit to the variety of abuse and

insults which many of us have experienced, for not consenting to a measure that might probably have surprised you into a surrender of your dearest rights. Our conduct has at least had the good effect to lengthen out the time of election, and induced them to postpone the election for members of the convention until the first Tuesday in November next; whereas the resolution first proposed, directed it to be holden for all the counties east of Bedford, on the day of the annual election, nine days from the time of proposing the measure.

3.2.4 We cannot conclude without requesting you to turn your serious attention to the government now offered to your consideration: "We are persuaded that a free and candid discussion of any subject tends greatly to the improvement of knowledge, and that a matter in which the public are so deeply interested cannot be too well understood. A good constitution and government is a blessing from heaven, and the right of posterity and mankind; suffer then we intreat you no interested motive, sinister view, or improper influence to direct your determinations or biass your judgements."[3] Provide yourselves with the new constitution offered to you by the convention, look it over with attention that you be enabled to think for yourselves. We confess when the legislature appointed delegates to attend the convention, our ideas extended no farther than a revision or amendment of the present confederation, nor were our delegates, by the acts of assembly appointing them, authorised to do more, as will appear by referring to the said act, the second section of which describes their powers in the following words, viz.

3.2.5 2. Be it enacted, and it is hereby enacted by the representatives of the freemen of the commonwealth of Pennsylvania in general assembly met, and by the authority of the same. That Thomas Mifflin, Robert Morris, George Clymer, Jared Ingersoll, Thomas Fitzsimons, James Wilson and Governeur Morris, Esquires, are hereby appointed deputies from this state to meet in the convention of the deputies of the respective states of North-America, to be held at the city of Philadelphia, on the second day of the month of May next. And the said Thomas Mifflin, Robert Morris, George Clymer, Jared Ingersoll, Thomas Fitzsimons, James Wilson and Governeur Morris, Esquires, or any four of them are hereby constituted and appointed deputies from this state, with powers to meet such deputies as may be appointed and authorised by the other states to assemble in the said convention at the city aforesaid, and to join with them in devising, deliberating on, and discussing all such alterations and further provisions as may be necessary to render the federal constitution fully adequate to the exigencies of the union; and in reporting such act or acts for that purpose, to the United States in Congress assembled, as when agreed to by them, and duly confirmed by the several states, will effectually provide for the same.[4]

3.2.6 You will therefore perceive that they had no authority whatever from the legislature, to annihilate the present confederation and form a constitution entirely new, and in doing which they have acted as mere individuals, not as

the official deputies of this commonwealth. If however, after mature deliberation you are of opinion that the plan of government which they have offered for your consideration is best calculated to promote your political happiness and preserve those invaluable privileges you at present enjoy, you will no doubt chose men to represent you in convention who will adopt it; if you think otherwise you will, with your usual firmness, determine accordingly.

You have a right, and we have no doubt you will consider whether or not 3.2.7
you are in a situation to support the expence of such a government as is now offered to you, as well as the expence of your state government? or whether a legislature consisting of three branches,[5] neither of them chosen annually, and that the senate, the most powerful, the members of which are for six years, are likely to lessen your burthens or encrease your taxes? or whether in case your state government should be annihilated, which will probably be the case, or dwindle into a mere corporation, the continental government will be competent to attend to your local concerns? You can also best determine whether the power of levying and imposing internal taxes at pleasure, will be of real use to you or not? or whether a continental collector assisted by a few faithful soldiers will be more eligible than your present collectors of taxes? You will also in your deliberations on this important business judge, whether the liberty of the press may be considered as a blessing or a curse in a free government, and whether a declaration for the preservation of it is necessary? or whether in a plan of government any declaration of rights should be prefixed or inserted? You will be able likewise to determine, whether in a free government there ought or ought not to be any provision against a standing army in time of peace? or whether the trial by jury in civil causes is become dangerous and ought to be abolished? and whether the judiciary of the United States is not so constructed as to absorb and destroy the judiciaries of the several states? you will also be able to judge whether such inconveniencies have been experienced by the present mode of tryal between citizen and citizen, of different states as to render a continental court necessary for that purpose? or whether there can be any real use in the appellate jurisdiction with respect to fact as well as law? we shall not dwell longer on the subject; one thing however, it is proper you should be informed of: the convention were not unanimous with respect to men though they were as states, several of those who have signed did not fully approve of the plan of government, and three of the members, viz. Governor Randolph and Colonel George Mason of Virginia, and Eldridge Gerry, Esquire, of Massachusetts, whose characters are very respectable, had such strong objections as to refuse signing. The confederation no doubt is defective and requires amendment and revision, and had the convention extended their plan to the enabling the United States to regulate commerce, equalize the impost, collect it throughout the United States and have the entire jurisdiction over maritime affairs, leaving the

exercise of internal taxation to the separate states, we apprehend there would have been no objection to the plan of government.

3.2.8 The matter will be before you, and you will be able to judge for yourselves. "Shew that you seek not yourselves, but the good of your country, and may he who alone has dominion over the passions and understandings of men enlighten and direct you aright, that posterity may bless God for the wisdom of their ancestors."[6]

James M'Calmont	*John Gilchrist*
Robert Clark	*Abraham Smith*
Jacob Miley	*Robert Whitehill*
Alexander Wright	*David Mitchell*
John M'Dowell	*John Piper*
John Flenniken	*Samuel Dale*
James Allison	*William Findley*
Theophilus Philips	*James Barr.*

Saturday, Sept. 29, 1787.

1. With the Republicans in control of the state legislature, and considering the party animosities in Pennsylvania, it is not surprising that the Pennsylvania delegation to the Philadelphia Convention in 1787 was made up of men from their own party. It must also be said, however, that the Constitutionalists seem to have underestimated the importance of the Convention. George Bryan somewhat vaguely recalled that "very little bustle was made and little or no opposition." Konkle, *George Bryan* 300. Harding reports that Constitutionalist leader William Findley was asked to attend the Convention but declined on the ground that he could not afford to serve without a salary. *Annual Report of the American Historical Association 1894* 391 n. 2. The Constitutionalist posture was a typical grudging acquiescence to Republican initiatives in strengthening the confederation. On Pennsylvania's response to the proposal for a 5 percent federal impost, see Brunhouse, *The Counter Revolution in Pennsylvania* 132.

2. An Independent Citizen replied that the persons responsible for this action "were induced by motives of necessity, and public good to exert themselves in bringing your servants as well as theirs, to that duty from which they had disgracefully absconded." McMaster and Stone 87.

3. It is not clear whether this is a quotation or only set off for emphasis; but no source has been found.

4. Farrand III, 565–66; see Republican Federalist 4.13.10 n. 6.

5. Pelatiah Webster made a lengthy and well-reasoned reply to this criticism, in which he defended a separation of powers as promoting mature deliberation. McMaster and Stone 95–99.

6. Again, it is not clear whether this is a quotation or only set off for emphasis; but no source has been found.

Essays of An Old Whig

(PHILADELPHIA) INDEPENDENT GAZETTER
October 1787–February 1788

The essays of An Old Whig appeared in the Philadelphia *Independent Gazetteer* mainly during October and November 1787. They are not in the first rank of Anti-Federalist writings, but they are moderate and reasonably well argued and were reprinted rather widely in Pennsylvania, New York, and Massachusetts. The author is not known. A sketch of the essays follows.

Essay I. Once the Constitution is adopted, amendment will be extremely difficult, because the provisions for amendment are complex and require a high degree of agreement, because the states will have been reduced to "forms and shadows," because the great and powerful will not desire amendments, and because the press may be restrained on the principle that the people should not trouble themselves with government. We ought therefore not to hasten to a conclusion.

Essay II. James Wilson's argument that the Constitution reserves to the people all powers not explicitly granted is not tenable: (1) there is no such provision; (2) the powers actually granted, and particularly the necessary and proper clause, are unlimited; (3) there is no bill of rights under which the people could appeal to the courts; and (4) the supremacy clause is the capstone of this system of national legislative supremacy. We are left entirely dependent on the wisdom and virtue of the members of Congress.

Essay III. The treaty power is dangerous in its scope and implication. It is said that the power will not be abused, but the study of patriots is to restrain power so as to prevent abuse. The provisions of state bills of rights are no protection against, e.g., congressional restraint of the liberty of the press. The provision for trial by jury in criminal cases is not a sufficient protection against governmental oppression, for the government can tyrannize by way of civil suits for penalties, forfeitures, and demand for public debts as well as criminal prosecutions. There is no reason why the trial by jury in civil cases could not have been guaranteed.

Essay IV. Our chief danger is overhasty action in response to admitted difficulties; a second convention ought to be called. The proposed Constitu-

tion will annihilate separate state governments; no republic ever existed over so large an area. We ought to form a plan of confederation that will support continental union, while at the same time maintaining the rights of the separate states and liberties of the subjects. We are in a favorable period for establishing a good constitution, but it will require a careful attention to a bill of rights. A bill of rights not only protects the individual but strengthens government by strengthening the attachment of the people.

Essay V. Discussion of need for a bill of rights continued, with special reference to the need to protect liberty of conscience against the enthusiasm for uniformity of opinion that is always ready to extinguish dissent. Turning to the *form* of government, the President is clothed with dangerous powers and is in fact an elected king. It would be better to adopt a hereditary monarchy immediately if this is what is wanted. The office must be "either reduced to a lower pitch of power or made perpetual and hereditary" (3.3.31).

Essay VI. An efficient federal government, which is needed, could be secured by giving Congress power to regulate trade and lay and collect duties on impost. The proposed unlimited taxing power could be used to negate any state tax or regulation. The proponents say that direct taxes will not be necessary, but they will be used if granted, and if they are not needed why grant the power? The true distinction is between internal and external taxes; the maintenance of the federal system, and thus of republican government, depends on maintaining this distinction.

Essay VII. If the choice were between the proposed Constitution and no continental government, An Old Whig would choose the former, but the situation is not so deplorable. Some say that the common people should leave the matter to their superiors, but this is not the language of the Revolution. An Old Whig proposes that the Constitution be neither adopted nor rejected but that (1) new state conventions be called to suggest objections and amendments (about which there will be much agreement) and (2) a second federal convention be called to revise the proposal and with a prior agreement to abide by its decision.

Essay VIII. In this epilogue (which followed the main series after a period of two months), An Old Whig returns to the theme of his first essay. The time for amendments is before rather than after the Constitution is adopted. Both the tendency of rulers to keep all the power they can and the difficulty of the amendment procedure make it likely that no substantial changes will be made once the Constitution is adopted.

I

Mr. Printer,

3.3.1 I am one of those who have long wished for a federal government, which

should have power to protect our trade and provide for the general security of the United States. Accordingly, when the constitution proposed by the late convention made its appearance, I was disposed to embrace it almost without examination; I was determined not to be offended with trifles or to scan it too critically. "We want something: let us try this; experience is the best teacher: if it does not answer our purpose we can alter it: at all events it will serve for a beginning." Such were my reasonings;—but, upon further reflection, I may say that I am shaken with very considerable doubts and scruples. I want a federal constitution; and yet I am afraid to concur in giving my consent to the establishment of that which is proposed. At the same time I really wish to have my doubts removed, if they are not well founded. I shall therefore take the liberty of laying some of them before the public, through the channel of your paper.

In the first place, it appears to me that I was mistaken in supposing that 3.3.2
we could so very easily make trial of this constitution and again change it at our pleasure. The conventions of the several states cannot propose any alterations—they are only to give their *assent* and *ratification*. And after the constitution is once ratified, it must remain fixed until two thirds of both the houses of Congress shall deem it necessary to propose amendments; or the legislatures of two thirds of the several states shall make application to Congress for the calling a convention for proposing amendments, which amendments shall not be valid till they are ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as one or the other mode of ratification may be proposed by Congress.—This appears to me to be only a cunning way of saying that no alteration shall ever be made; so that whether it is a good constitution or a bad constitution, it will remain forever unamended. Lycurgus, when he promulgated his laws to the Spartans, made them swear that they would make no alterations in them until he should return from a journey which he was then about to undertake.—He chose never to return, and therefore no alterations could be made in his laws. The people were made to believe that they could make trial of his laws for a few months or years, during his absence, and as soon as he returned they could continue to observe them or reject at pleasure. Thus this celebrated Republic was in reality established by a trick. In like manner the proposed constitution holds out a prospect of being subject to be changed if it be found necessary or convenient to change it; but the conditions upon which an alteration can take place, are such as in all probability will never exist. The consequence will be that, when the constitution is once established, it never can be altered or amended without some violent convulsion or civil war.[1]

The conditions, I say, upon which any alterations can take place, appear 3.3.3
to me to be such as never will exist—two thirds of both houses of Congress or the legislatures of two thirds of the states, must agree in desiring a convention to be called. This will probably never happen; but if it should happen, then the convention may agree to the amendments or not as they

think right; and after all, three fourths of the states must ratify the amendments.—Before all this labyrinth can be traced to a conclusion, ages will revolve, and perhaps the great principles upon which our late glorious revolution was founded, will be totally forgotten. If the principles of liberty are not firmly fixed and established in the present constitution, in vain may we hope for retrieving them hereafter. People once possessed of power are always loth to part with it; and we shall never find two thirds of a Congress voting or proposing any thing which shall derogate from their own authority and importance, or agreeing to give back to the people any part of those privileges which they have once parted with—so far from it[,] that the greatest occasion there may be for a reformation, the less likelihood will there be of accomplishing it. The greater the abuse of power, the more obstinately is it always persisted in. As to any expectation of two thirds of the legislatures concurring in such a request, it is if possible, still more remote. The legislatures of the states will be but forms and shadows, and it will be the height of arrogance and presumption in them, to turn their thoughts to such high subjects. After this constitution is once established, it is too evident that we shall be obliged to fill up the offices of assemblymen and councillors, as we do those of constables, by appointing men to serve whether they will or not, and fining them if they refuse. The members thus appointed, as soon as they can hurry through a law or two for repairing highways or impounding cattle, will conclude the business of their sessions as suddenly as possible; that they may return to their own business.—Their heads will not be perplexed with the great affairs of state—We need not expect two thirds of them ever to interfere in so momentous a question as that of calling a Continental convention.—The different legislatures will have no communication with one another from the time of the new constitution being ratified, to the end of the world. Congress will be the great focus of power as well as the great and only medium of communication from one state to another. The great, and the wise, and the mighty will be in possession of places and offices; they will oppose all changes in favor of liberty; they will steadily pursue the acquisition of more and more power to themselves and their adherents.[2] The cause of liberty, if it be now forgotten, will be forgotten forever.—Even the press which has so long been employed in the cause of liberty, and to which perhaps the greatest part of the liberty which exists in the world is owing at this moment;—the press may possibly be restrained of its freedom, and our children may possibly not be suffered to enjoy this most invaluable blessing of a free communication of each others sentiments on political subjects—Such at least appear to be some men's fears, and I cannot find in the proposed constitution any thing expressly calculated to obviate these fears; so that they may or may not be realized according to the principles and dispositions of the men who may happen to govern us hereafter. One thing however is calculated to alarm our fears on this head;—I mean the fashionable language which now prevails so

much and is so frequent in the mouths of some who formerly held very different opinions;—THAT COMMON PEOPLE HAVE NO BUSINESS TO TROUBLE THEMSELVES ABOUT GOVERNMENT.[3] If this principle is just the consequence is plain that the common people need no information on the subject of politics. Newspapers, pamphlets and essays are calculated only to mislead and inflame them by holding forth to them doctrines which they have no business or right to meddle with, which they ought to leave to their superiors. Should the freedom of the press be restrained on the subject of politics, there is no doubt it will soon after be restrained on all other subjects, religious as well as civil. And if the freedom of the press shall be restrained, it will be another reason to despair of any amendments being made in favor of liberty, after the proposed constitution shall be once established. Add to this, that under the proposed constitution, it will be in the power of the Congress to raise and maintain a standing army for their support, and when they are supported by an army, it will depend on themselves to say whether any amendments shall be made in favor of liberty.

If these reflections are just it becomes us to pause, and reflect previously 3.3.4
before we establish a system of government which cannot be amended; which will entail happiness or misery on ourselves and our children. We ought I say to reflect carefully, we ought not by any means to be in haste; but rather to suffer a little temporary inconvenience, than by any precipitation to establish a constitution without knowing whether it is right or wrong, and which if wrong, no length of time will ever mend. Scarce any people ever deliberately gave up their liberties; but many instances occur in history of their losing them forever by a rash and sudden act, to avoid a pressing inconvenience or gratify some violent passion of revenge or fear. It was a celebrated observation of one of our Assemblies before the revolution, during their struggles with the proprietaries, that "those who would give up essential liberty to purchase a little temporary safety deserve neither liberty nor safety."[4]

For the present I shall conclude with recommending to my countrymen 3.3.5
not to be in haste, to consider carefully what we are doing. It is our own concern; it is our own business; let us give ourselves a little time at least to read the proposed constitution and know what it contains; for I fear that many, even of those who talk most about it have not even read it, and many others, who are as much concerned as any of us, have had no opportunity to read it. And it is certainly a suspicious circumstance that some people who are presumed to know most about the new constitution, seem bent upo forcing it on their countrymen without giving them time to know what they are doing.

Hereafter I may trouble you further on some other parts of this important subject; but I fear this letter is already too long.

Yours.
An Old Whig.

II

Mr. Printer,

3.3.6 Since writing my last, in which I stated some doubts respecting the new federal constitution and expressed a wish that those doubts might be removed, I have met with the printed speech of *James Wilson,* Esquire.—This speech I find was made for the express purpose of removing objections from the minds of those who doubted, like myself, and wished to be satisfied; and except one or two hard names that have escaped the speaker, it bears the marks of more candor than is to be found in most of the production, which have been ushered into the world in support of the same measure. This speech also deserves the more attention as coming from a man of abilities fresh from "*the impressions of four months constant attention to the subject.*"[5] The subject however is one of those which it imports us all very carefully to examine. I have therefore paid very considerable attention to his arguments, at the same time that I have examined with some care the foundation upon which they are built. Still I remain unsatisfied; and the more unsatisfied, as I have been disappointed in my hope of conviction, from a quarter, from which so much was to be expected—You will give me leave therefore to state shortly in your paper, some of those difficulties which still remain with me.

3.3.7 The first principle which the gentleman endeavours to establish in his speech is a very important one, if true; and lays a sure foundation to reason upon, in answer to the objection which is made to the new constitution, from the want of a bill of rights. The principle is this: that "in *delegating federal powers,* the congressional authority is to be collected, *not from tacit implication,* but from *the positive grant* expressed in the instrument of union," "*that every thing which is not given is reserved.*"[6] *If this* be a just representation of the matter, the authority of the several states will be sufficient to protect our liberties from the encroachments of Congress, without any continental bill of rights; *unless* the powers which are *expressly given* to Congress are *too large*.

3.3.8 Without examining particularly at present, whether the powers *expressly* given to Congress are too large or too small, I shall beg leave to consider, whether the author of this speech is sufficiently accurate in his statement of the proposition above referred to.—To strip it of unnecessary words, the position may be reduced to this short sentence, "that every thing which is not *expressly* given to Congress is reserved";[7] or in other words "that Congress cannot exercise any power or authority that is not in express words delegated to them."—This certainly is the case under the first articles of confederation which hitherto have been the rule and standard of the powers of Congress; for in the second of those articles "each state retains its sovereignty[,] freedom and independence and every power, jurisdiction

and right which is not by this confederation *expressly* delegated to the United States in Congress assembled." It was the misfortune of these articles of confederation that they did not by express words give to Congress power sufficient for the purposes of the union; for Congress could not go beyond those powers so expressly given. The position of the speech, therefore is strictly true if applied to the first articles of confederation; "that every thing which is not expressly given is reserved." We are not however to suppose that the speaker meant insidiously to argue from an article in the old confederation in favor of the new constitution, unless the same thing was also in the new constitution. Let us then fairly examine whether in the proposed new constitution there be any thing from which the gentleman can be justified in this opinion, "that every thing which is not expressly given to Congress is reserved."

In the first place then it is most certain that we find no such clause or article in the new constitution. There is nothing in the new constitution which either in form or substance bears the least resemblance to the second article of the confederation. It might nevertheless be a fair argument to insist upon from the nature of delegated powers, that no more power is given in such cases than is expressly given. Whether or not this ground of argument would be such as we might safely rest our liberties upon; or whether it would be more prudent to stipulate expressly as is done in the present confederation for the reservation of all such powers as are not expressly given, it is hardly necessary to determine at present. It strikes me that by the proposed constitution, so far from the reservation of all powers that are not expressly given, *the future Congress will be fully authorised to assume all such powers as they in their wisdom or wickedness, according as the one or the other may happen to prevail, shall from time to time think proper to assume.* 3.3.9

Let us weigh this matter carefully; for it is certainly of the utmost importance, and, if I am right in my opinion, the new constitution vests Congress with such unlimited powers as ought never to be entrusted to any men or body of men. It is justly observed that the possession of sovereign power is a temptation too great for human nature to resist; and although we have read in history of one or two illustrious characters who have refused to enslave their country when it was in their power;—although we have seen one illustrious character in our own times resisting the possession of power when set in competition with his duty to his country, yet these instances are so very rare, that it would be worse than madness to trust to the chance of their being often repeated. 3.3.10

To proceed then with the enquiry, whether the future Congress will be restricted to those powers which are expressly given to them. I would observe that in the opinion of *Montesquieu,* and of most other writers, ancient as well as modern, the legislature is the sovereign power.[8] It is certainly the most important. If any one doubts this, let him reflect upon the 3.3.11

frequent inroads which the legislature of Pennsylvania has made upon the other branches of government: Inroads which it is much to be feared, if the powers of government in Pennsylvania should ever in time to come be an object worth contending about, no council of censors will ever be able to check or restrain.[9] Let us then see what are the powers expressly given to the legislature of Congress, and what checks are interposed in the way of the continental legislature's assuming what further power they shall think proper to assume.

3.3.12 To this end let us look to the first article of the proposed new constitution, which treats of the legislative powers of Congress; and to the eighth section which *pretends* to define those powers. We find here that the congress, in its legislative capacity, shall have the power "to lay and collect taxes, duties and excises; to borrow money; to regulate commerce; to fix the rule for naturalization and the laws of bankruptcy; to coin money; to punish counterfeiters; [to] establish post offices and post roads; to secure copy rights to authors; to constitute tribunals; to define and punish piracies; to declare war; to raise and support armies; to provide and support a navy; to make rules for the army and navy; to call forth the militia; to organize, arm and discipline the militia; to exercise absolute power[10] over a district of ten miles square, independant of all the state legislatures, and to be alike absolute over all forts, magazines, arsenals, dockyards and other needful buildings thereunto belonging." This is a short abstract of the powers expressly given to Congress. These powers are very extensive, but I shall not stay at present to inquire whether these *express* powers were necessary to be given to Congress? whether they are too great or too small? My object is to consider that *undefined, unbounded and immense power* which is comprised in the following clause;—"And, to make all laws which shall be necessary and proper for carrying into execution the *foregoing powers and all other powers* vested by this constitution in the government of the United States; or in any department or offices [officer] thereof."[11] Under such a clause as this can any thing be said to be reserved and kept back from Congress? Can it be said that the Congress have no power but what *is expressed?* "To make all laws which shall be necessary and proper" is in other words to make all such laws which *the Congress shall think necessary and proper*,—for who shall judge for the legislature what is necessary and proper?—Who shall set themselves above the sovereign?—What inferior legislature shall set itself above the supreme legislature?—To me it appears that no other power on earth can dictate to them or controul them, unless by force; and force either internal or external is one of those calamities which every good man would wish his country at all times to be delivered from.—This generation in America have seen enough of war and its usual concomitants to prevent all of us from wishing to see any more of it;—all except those who make a trade of war. But to the question;—without force what

can restrain the Congress from making such laws as they please? What limits are there to their authority?—I fear none at all; for surely it cannot justly be said that they have no power but what is expressly given to them, where by the very terms of their creation they are vested with the powers of making laws in all cases necessary and proper; when from the nature of their power they must necessarily be the judges, what laws are necessary and proper. The British act of Parliament, declaring the power of Parliament to make laws to bind America in all cases whatsoever,[12] was not more extensive; for it is as true as a maxim, that even the British Parliament neither could nor would pass any law in any case in which they did not either deem it necessary and proper to make such law or pretend to deem it so. And in such cases it is not of a farthing consequence whether they really are of opinion that the law is necessary and proper, or only *pretend to think so;* for who can overrule their pretensions?—No one; unless we had a bill of rights to which we might appeal, and under which we might contend against any assumption of undue power and appeal to the judicial branch of the government to protect us by their judgements. This reasoning I fear Mr. Printer is but too just; and yet, if any man should doubt the truth of it; let me ask him one other question, what is the meaning of the latter part of the clause which vests the Congress with the authority of making all laws which shall be necessary and proper for carrying into execution ALL OTHER POWERS;—besides the foregoing powers vested, &c. &c. Was it thought that the foregoing powers might perhaps admit of some restraint in *their* construction as to what was necessary and proper to carry them into execution? Or was it deemed right to add still further that they should not be restrained to the powers already named?—besides the powers already mentioned, other powers may be assumed hereafter as contained by implication in this constitution. The Congress shall judge of what is necessary and proper in all these cases and in all other cases;—in short in all cases whatsoever.

Where then is the restraint? How are Congress bound down to the powers expressly given? what is reserved or can be reserved? 3.3.13

Yet even this is not all—as if it were determined that no doubt should remain, by the sixth article of the constitution it is declared that, "this constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the judges in every state shall be bound thereby, *any thing in the constitutions or laws of any state to the contrary notwithstanding.*" The Congress are therefore vested with the supreme legislative power, without controul. In giving such immense, such unlimited powers, was there no necessity of a bill of rights to secure to the people their liberties? Is it not evident that we are left wholly dependent on the wisdom and virtue of the men who shall from time to time be the members of Congress? and who shall be able to say

seven years hence, the members of Congress will be wise and good men, or of the contrary character.

As I mean to pursue this subject in some other letters, I shall conclude for the present; and am,

Yours,
An Old Whig.

III

Mr. Printer,

3.3.14 "Great men are not always wise,"[13] they have their seasons of inattention, and their moments of frailty and error, in which it is too evident, they are not wholly exempted from the infirmity of human nature. We ought not therefore implicitly to approve and admire, without examination, every act that proceeds even from the best and wisest of mankind. The proposed new plan of federal government, is undoubtedly the work of some of the ablest and best men in this country; but yet we are not, for that reason only, to believe that it is free from imperfection. The convention themselves inform us that the constitution which they offer to us, is the effect of mutual accommodations and concessions, in which mode it is certain that the best and wisest propositions are not always those which are adopted. Indeed it appears to me that, after all the time which has been spent in this business, the convention at the close of their session have been glad to lay hold of any system in which a majority could possibly concur, so as not to separate without doing any thing; and that the model of government now before us, is at least the work of haste and inattention. To be convinced of this, let us turn again to the sixth article, which I have referred to in the close of my last letter. By this article, not only the "proposed constitution and laws of the United States, which shall be made in pursuance thereof"; but also "*all treaties* made or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitutions or laws of any state to the contrary notwithstanding."—The power of making treaties is vested in the president, with the concurrence of two thirds of the senators present; so that the president and two thirds of the senate have power to make laws in the form of treaties, independent of the legislature itself. If Great Britain, for instance, were willing to enter into a treaty with us, upon terms which would be inconsistent with the liberties of the people and destructive of the very being of a Republic, the consent of our president for the time being, and of two thirds of the senators present, even though the senators present should be but a very small part of the senate, will give such a treaty the validity of a

law. What power will there be anywhere to prevent this?—None.—Where all power legislative and executive is vested in one man or one body of men, treaties are made by the same authority which makes the laws; but where the legislature is extinct [distinct?] from the executive, the approbation of the legislature ought to be had, before a treaty should have the force of a law; and even in England the parliament is constantly applied to for their sanction to every treaty which tends to introduce an innovation or the slightest alteration in the laws in being, the law there is not altered by the treaty itself; but by an act of parliament which confirms the treaty, and alters the law so as to accommodate it to the treaty. The King in council has no such power. The only answer which can be made to this objection, which is so obvious, to the power given by the proposed constitution to the executive of making treaties, which shall be the "supreme law of the land," is, that it is not to be supposed they will abuse such power.—But yet we find that men in all ages have abused power, and that it has been the study of patriots and virtuous legislators at all times to restrain power, so as to prevent the abuse of it.—What then ought to be done, it may be asked.—Are treaties to be sent to all the different state legislatures for their approbation? By no means. But no treaty ought to be suffered to alter the law of the land, without the consent of the continental legislatures; the powers of the continental legislatures ought to be exactly defined; and there ought to be a bill of rights firmly established, which neither treaties nor acts of the legislature can alter.

Let us however give fair play to the answer which has been attempted to be given to this Objection. The author of the speech tells us, that a bill of rights would have been superfluous and absurd; because "no powers are given to Congress but what are expressly given";[14] and "that we shall still enjoy those privileges of which we are not divested either by the intention or the act that brought that body into existence.—For instance, the liberty of the press.—What controul can proceed from the federal government to shackle or destroy that sacred palladium of national freedom?"[15]—What controul!—Suppose that an act of the continental legislature should be passed to restrain the liberty of the press;—to appoint licensers of the press in every town in America;—to limit the number of printers;—and to compel them to give security for their good behaviour, from year to year, as the licenses are renewed: If such a law should be once passed, what is there to prevent the execution of it?—By the sixth article of the proposed constitution, this act of the continental legislature is "the supreme law of the land; and the judges in every state shall be bound thereby, ANY THING IN THE CONSTITUTION OR LAWS OF ANY STATE TO THE CONTRARY NOTWITHSTANDING."—Suppose a printer should be found hardy enough to contravene such a law when made, and to contest the validity of it.—He is prosecuted we will suppose, in this state—he pleads in his defence, that by the constitution of Pennsylvania, it is declared "that the freedom of the

3.3.15

press ought not to be restrained."—What will this avail him? The judge will be obliged to declare that "*notwithstanding the constitution of any state,*" this act of the continental legislature which restrains the freedom of the press, is "the supreme law; and we must punish you—The bill of rights of Pennsylvania is nothing here. That bill of rights indeed is binding upon the legislature of Pennsylvania, but it is not binding upon the legislature of the continent." Such must be the language and conduct of courts, as soon as the proposed continental constitution shall be adopted.

3.3.16 As to the trial by jury, the question may be decided in a few words. Any future Congress sitting under the authority of the proposed new constitution, may, if they chuse, enact that there shall be no more trial by jury, in any of the United States; except in the trial of crimes; and this "SUPREME LAW" will at once annul the trial by jury, in all other cases. The author of the speech supposes that no danger "can possibly ensue, since the proceedings of the supreme court are to be regulated by the Congress, which is a faithful representation of the people; and the oppression of government is effectually barred; by declaring that in all criminal cases the trial by jury shall be preserved."[16] Let us examine the last clause of this sentence first.—I know that an affected indifference to the trial by jury has been expressed, by some persons high in the confidence of the present ruling party in some of the states;[17]—and yet for my own part I cannot change the opinion I had early formed of the excellence of this mode of trial even in civil causes. On the other hand I have no doubt that whenever a settled plan shall be formed for the extirpation of liberty, the banishment of jury trials will be one of the means adopted for the purpose.—But how is it that "the oppression of government is effectually barred by declaring that in all criminal cases the trial by jury shall be preserved?"—Are there not a thousand civil cases in which the government is a party?—In all actions for penalties, forfeitures and public debts, as well as many others, the government is a party and the whole weight of government is thrown into the scale of the prosecution[,] yet these are all of them civil causes.—These penalties, forfeitures and demands of public debts may be multiplied at the will and pleasure of government.—These modes of harrassing the subject have perhaps been more effectual than direct criminal prosecutions.—In the reign of Henry the Seventh of England, Empson and Dudley acquired an infamous immortality by these prosecutions for penalties and forfeitures.[18]—Yet all these prosecutions were in the form of civil actions; they are undoubtedly objects highly alluring to a government.—They fill the public coffers and enable government to reward its minions at a cheap rate.—They are a profitable kind of revenge and gratify the officers about a court, who study their own interests more than corporal punishment.—Perhaps they have at all times been more eagerly pursued than mere criminal prosectuions.—Shall trial by jury be taken away in all these cases and shall we still be told that

"we are effectually secured against the oppressions of government?" At this rate Judges may sit in the United States, as they did in some instances before the war, without a jury to condemn people's property and extract money from their pockets, to be put into the pockets of the judges themselves who condemn them; and we shall be told that we are safe from the oppression of government.—No, Mr. Printer, we ought not to part with the trial by jury; we ought to guard this and many other privileges by a bill of rights, which cannot be invaded. The reason that is pretended in the speech why such a declaration[,] as a bill of rights requires, cannot be made for the protection of the trial by jury;—"that we cannot with any propriety say 'that the trial by jury shall be as heretofore' in the case of a federal system of jurisprudence,["—][19] is almost too contemptible to merit notice.—Is this the only form of words that language could afford on such an important occasion? Or if it were [,] to what did these words refer when adopted in the constitutions of the states?—Plainly sir, to the trial by juries as established by the common law of England in the state of its purity;—That common law for which we contended so eagerly at the time of the revolution, and which now after the interval of a very few years, by the proposed new constitution we seem ready to abandon forever; at least in that article which is the most invaluable part of it; the trial by jury.

Still however the great answer to all the objections that are made or can be made to the proposed constitution is this;—that there is no danger in trusting the Congress with any power: They will not abuse it. I shall conclude this letter with asking such as are willing to satisfy themselves with this answer only to look back for ten or twelve years and recollect what a mighty change has taken place in the political opinions of many people since that time. If they have forgotten let me beg of them to read over the publications of the years, 1774, 1775, 1776 and 1777. What was the spirit, what was the complaints of those times from Congress down to the smallest meeting of the people? Our present language will be found to give the lie to our former professions; and we have sinned egregiously in wading thro' such an ocean of blood, if we were not well founded in the pretensions upon which we encountered the horrors of a civil war in establishing the revolution.—If such has been the change, as a very short examination will convince any man[,] that has taken place in a few years past, what right have we to trust to the existence of such pure and immaculate virtue in time to come, that we should tamely and implicitly surrender our liberties at discretion into the hands of a government whose constituent members are totally unknown to us. Solomon has told us that no man knows whether a fool or a wise man is to inherit his estate;[20] neither do we know whether honest and virtuous men or knaves and tyrants are to regulate our future councils. Let us then guard ourselves, as far as we can, against the possibility of being enslaved by wicked men, whilst the power of guarding ourselves is in our own hands. I

3.3.17

know that the country is distressed; but it is not distressed beyond the power of remedy.—Let us take care that we do not involve ourselves in slavery, from the distresses of which we can never redeem ourselves.

Your's, &c.
An Old Whig.

IV[21]

Mr. Printer,

3.3.18 This is certainly a very important crisis to the people of America; experience seems to have convinced every one, that the articles of confederation, under which Congress have hitherto attempted to regulate the affairs of the United States, are insufficient for the purposes intended; that we are a ruined people unless some alteration can be effected. The public mind has therefore been raised to the highest pitch of expectation, and the evident need of relief from the many distresses, public and private, in which we are involved has reduced us to such a state, that we can hardly endure a disappointment. Scarcely any thing that could be proposed by the convention, in this state of people's minds, would fail of being eagerly embraced. Like a person in the agonies of a violent disease, who is willing to swallow any medicine, that gives the faintest hope of relief; the people stood ready to receive the new constitution, in almost any form in which it could be presented to them. The zealous supporters of the proposed constitution, seem to be not unwilling to avail themselves of this disposition: and therefore it is strongly inculcated, that if we do not adopt this constitution, we shall not be able to establish another, but be left to our present weakness, confusion and distress. If I was pursuaded that this is really the case, I hardly know whether I should vote for rejecting any government however unfriendly to the liberties of the people, which promised to give vigour to the councils of this country; for any government is better than none. However, I do not see that it is by any means impracticable, for us yet to correct such errors and imperfections, as appear to exist in the proposed constitution; and whilst there is a possibility of procuring a better constitution, it is the duty of every good man to accomplish it.

3.3.19 By the proposed constitution, every law, before it passes, is to undergo repeated revisions; and the constitution[s] of every state in the union provide, for the reversion [revision?] of the most trifling laws, either by their passing through different houses of assembly and senate, or by requiring them to be published for the consideration of the people. Why then is a constitution which affects all the inhabitants of the United States, which is to be the foundation of all laws and the source of misery or happiness to one

quarter of the globe; why is this to be so hastily adopted or rejected, that it cannot admit of a revision?—If a law to regulate highways, requires to be leisurely considered and undergo the examination of different bodies of men, one after another, before it be passed, why is it that the framing of a constitution for the government of a great people; a work which has been justly considered as the greatest effort of human genius, and which, from the beginning of the world has so often baffled the skill of the wisest men in every age, shall be considered as a thing to be thrown out, in the first shape which it may happen to assume? Where is the impracticability of a revision? Cannot the same power which called the late convention, call another? Are not the people still their own masters? If, when the several state conventions come to consider this constitution, they should not approve of it, in its present form, they may easily apply to Congress and state their objections. Congress may as easily direct the calling another convention, as they did the calling the last. The plan may then be reconsidered, deliberately received and corrected; so as to meet the approbation of every friend to his country. A few months only will be necessary for this purpose; and if we consider the magnitude of the object, we shall deem it well worth a little time and attention—It is much better to pause and reflect beforehand, than to repent when it is too late; when no peaceable remedy will be left us, and unanimity will be forever banished. The struggles of the people against a bad government, when it is once fixed, afford but a gloomy picture in the annals of mankind. They are often unfortunate, they are always destructive of public and private happiness; but the peaceable consent of a people to establish a free and effective government, is one of the most glorious objects that is ever exhibited in the theatre of human affairs. Some I know, have objected, that another convention will not be likely to agree upon any thing—I am far however from being of that opinion. The public voice cries so loudly for a new constitution, that I have no doubt we shall have one of some sort.—My only fear is, that the impatience of the people will lead them to accept the first that is offered them, without examining whether it is right or wrong; and after all, if a new convention cannot agree upon any amendments in the constitution, which is at present proposed, we can still adopt this in its present form; and all further opposition being vain, it is to be hoped we shall be unanimous in endeavouring to make the best of it. The experiment is at least worth trying, and I shall be much astonished, if a new convention called together for the purpose of revising the proposed constitution, do not greatly reform it.

I find that a number of pens are employed, in pointing out the defects in the proposed constitution—Without descending therefore, into minute particulars, I shall confine the remainder of my observations in this letter, to one or two of the most important considerations. 3.3.20

It is beyond a doubt that the new federal constitution, if adopted, will in a great measure destroy, if it do not totally annihilate, the separate govern-

ments of the several states. We shall, in effect, become one great Republic.—Every measure of any importance, will be Continental.—What will be the consequence of this? One thing is evident—that no Republic of so great a magnitude, ever did, or ever can exist. But a few years elapsed, from the time in which ancient Rome extended her dominions beyond the bounds of Italy, until the downfal of her Republic; and all political writers agree, that a Republican government can exist only in a narrow territory: but a confederacy of different Republics has, in many instances, existed and flourished for a long time together—The celebrated *Helvetian* league, which exists at this moment in full vigor, and with unimpaired strength, whilst its origin may be traced to the confines of antiquity, is one, among many examples on this head; and at the same time furnishes an eminent proof of how much less importance it is, that the constituent parts of a confederacy of Republics may be rightly framed than it is, that the confederacy itself should be rightly organized;—for hardly any two of the Swiss cantons have the same form of government, and they are almost equally divided in their religious principles, which have so often rent asunder the firmest establishments.[22] A confederacy of Republics must be the establishment in America, or we must cease altogether to retain the Republican form of government. From the moment we become one great Republic, either in form or substance, the period is very shortly removed, when we shall sink first into monarchy, and then into despotism.—If there were no other fault in the proposed constitution, it must sink by its own weight. The continent of North-America can no more be governed by one Republic, than the fabled Atlas could support the heavens. Is it not worthy a few months labour, to attempt the rescuing this country from the despotism, which at this moment holds the best and fairest regions of the earth in thraldom and wretchedness?—To attempt the forming a plan of confederation, which may may enable us at once to support our continental union with vigor and efficacy, and to maintain the rights of the separate states and the invaluable liberty of the subject? These ideas of political felicity, to some people, may seem like the visions of an Utopian fancy; and I am persuaded that some amongst us have as little disposition to realize them, as they have to recollect the principles, which inspired us in our revolt from Great-Britain. But there is at least, this consolation in aiming at excellence, that, if we do not obtain our object, we can make considerable progress towards it.—The science of politics has very seldom had fair play. So much of passion, interest and temporary prospects of gain are mixed in the pursuit, that a government has been much oftener established[,] with a view to the particular advantages or necessities of a few individuals, than to the permanent good of society. If the men, who, at different times, have been entrusted to form plans of government for the world, had been really actuated by no other views than a regard to the public good, the condition of human nature in all ages would have been widely different, from that which has been

exhibited to us in history. In this country perhaps we are possessed of more than our share of political virtue. If we will exercise a little patience, and bestow our best endeavours on the business, I do not think it impossible, that we may yet form a federal constitution, much superior to any form of government, which has ever existed in the world;—but, whenever this important work shall be accomplished, I venture to pronounce, that it will not be done without a *careful attention to the framing of a bill of rights.*

3.3.21 Much has been said and written, on the subject of a bill of rights;—possibly without sufficient attention to the necessity of conveying distinct and precise ideas of the true meaning of a bill or rights. Your readers, I hope, will excuse me, if I conclude this letter with an attempt to throw some light on this subject.

3.3.22 Men when they enter into society, yield up a part of their natural liberty, for the sake of being protected by government. If they yield up all their natural rights they are absolute slaves to their governors. If they yield up less than is necessary, the government is so feeble, that it cannot protect them.—To yield up so much, as is necessary for the purposes of government; and to retain all beyond what is necessary, is the great point, which ought, if possible, to be attained in the formation of a constitution. At the same time that by these means, the liberty of the subject is secured, the government is really strengthened; because wherever the subject is convinced that nothing more is required from him, than what is necessary for the good of the community, he yields a chearful obedience, which is more useful than the constrained service of slaves.—To define what portion of his natural liberty, the subject shall at all times be entitled to retain, is one great end of a bill of rights. To these may be added in a bill of rights some particular engagements of protection, on the part of government[;] without such a bill of rights, firmly securing the privileges of the subject, the government is always in danger of degenerating into tyranny; for it is certainly true, that "in establishing the powers of government, the rulers are invested with every right and authority, which is not in explicit terms reserved."[23]—Hence it is, that we find the rulers so often lording over the people at their will and pleasure. Hence it is that we find the patriots, in all ages of the world, so very solicitous to obtain explicit engagements from their rulers, stipulating, expressly, for the preservation of particular rights and privileges.

3.3.23 In different nations, we find different grants or reservations of privileges appealed to in the struggles between the rulers and the people, many of which in the different nations of Europe, have long since been swallowed up and lost by time, or destroyed by the arbitrary hand of power. In England we find the people, with the Barons at their head, exacting a solemn resignation of their rights from king John, in their celebrated *magna charta*, which was many times renewed in Parliament, during the reigns of his successors. The *petition of rights* was afterwards consented to by Charles

the first, and contained a declaration of the liberties of the people. The *habeas corpus act,* after the restoration of Charles the Second, *the bill of rights,* which was obtained from the Prince and Princess of Orange on their accession to the throne[,] and the act of settlement, at the accession of the Hanover family, are other instances to shew the care and watchfulness of that nation, to improve every opportunity, of the reign of a weak prince, or the revolution in their government, to obtain the most explicit declarations in favor of their liberties. In like manner the people of the country, at the revolution, having all power in their own hands, in forming the constitutions of the several states, took care to secure themselves by bills of rights, so as to prevent, as far as possible, the encroachments of their future rulers upon the rights of the people. Some of these rights are said to be *unalienable,* such as the rights of conscience: yet even these have been often invaded, where they have not been carefully secured by express and solemn bills and declarations in their favor.

3.3.24 Before we establish a government, whose acts will be THE SUPREME LAW OF THE LAND, and whose power will extend to almost every case without exception, we ought carefully to guard ourselves by a BILL OF RIGHTS, against the invasion of those liberties which it is essential for us to retain, which it is of no real use to government to strip us of; but which in the course of human events have been too often insulted with all the wantonness of an idle barbarity.

Your's,
An Old Whig.

V[24]

Mr. Printer,

3.3.25 In order that people may be sufficiently impressed, with the necessity of establishing a BILL OF RIGHTS in the forming of a new constitution, it is very proper to take a short view of some of those liberties, which it is of the greatest importance for Freemen to retain to themselves, when they surrender up a part of their natural rights for the good of society.

3.3.26 The first of these, which it is of the utmost importance for the people to retain to themselves, which indeed they have not even the right to surrender, and which at the same time it is of no kind of advantage[25] to government to strip them of, is the LIBERTY OF CONSCIENCE. I know that a ready answer is at hand, to any objections upon this head. We shall be told that in this enlightened age, the rights of conscience are perfectly secure: There is no necessity of guarding them; for no man has the remotest thoughts of

invading them. If this be the case, I beg leave to reply that now is the very time to secure them.—Wise and prudent men always take care to guard against danger beforehand, and to make themselves safe whilst it is yet in their power to do it without inconvenience or risk.—[W]ho shall answer for the ebbings and flowings of opinion, or be able to say what will be the fashionable frenzy of the next generation? It would have been treated as a very ridiculous supposition, a year ago, that the charge of witchcraft would cost a person her life in the city of Philadelphia; yet the fate of the unhappy old woman called *Corbmaker*, who was beaten—repeatedly wounded with knives—mangled and at last killed in our streets, in obedience to the commandment which requires "that we shall not suffer a witch to live," without a possibility of punishing or even of detecting the authors of this inhuman folly, should be an example to warn us how little we ought to trust to the unrestrained discretion of human nature.

Uniformity of opinion in science, morality, politics or religion, is undoubtedly a very great happiness to mankind; and there have not been wanting zealous champions in every age, to promote the means of securing so invaluable a blessing. If in America we have not lighted up fires to consume Heretics in religion, if we have not persecuted unbelievers to promote the unity of the faith, in matters which pertain to our final salvation in a future world, I think we have all of us been witness to something very like the same spirit, in matters which are supposed to regard our political salvation in this world. In Boston it seems at this very moment, that no man is permitted to publish a doubt of the infalibility of the late convention, without giving up his name to the people, that he may be delivered over to speedy destruction; and it is but a short time since the case was little better in this city.[26] Now this is a portion of the very same spirit, which has so often kindled the fires of the inquisition: and the same Zealot who would hunt a man down for a difference of opinion upon a political question which is the subject of public enquiry, if he should happen to be fired with zeal for a particular species of religion, would be equally intolerant. The fact is, that human nature is still the same that ever it was: the fashion indeed changes; but the seeds of superstition, bigotry and enthusiasm, are too deeply implanted in our minds, ever to be eradicated; and fifty years hence, the French may renew the persecution of the Huguenots, whilst the Spaniards in their turn may become indifferent to their forms of religion. They are idiots who trust their future security to the whim of the present hour. One extreme is always apt to produce the contrary, and those countries, which are now the most lax in their religious notions, may in a few years become the most rigid, just as the people of this country from not being able to bear any continental government at all, are now flying into the opposite extreme of surrendering up all the powers of the different states, to one continental government. 3.3.27

The more I reflect upon the history of mankind, the more I am disposed to 3.3.28

think that it is our duty to secure the essential rights of the people, by every precaution; for not an avenue has been left unguarded, through which oppression could possibly enter in any government[,] without some enemy of the public peace and happiness improving the opportunity to break in upon the liberties of the people; and none have been more frequently successful in the attempt, than those who have covered their ambitious designs under the garb of a fiery zeal for religious orthodoxy. What has happened in other countries and in other ages, may very possibly happen again in our own country, and for aught we know, before the present generation quits the stage of life. We ought therefore in a *bill of rights* to secure, in the first place, by the most express stipulations, the sacred rights of conscience. Has this been done in the constitution, which is now proposed for the consideration of the people of this country?—Not a word on this subject has been mentioned in any part of it; but we are left in this important article, as well as many others, entirely to the mercy of our future rulers.

3.3.29 But supposing our future rulers to be wicked enough to attempt to invade the rights of conscience; I may be asked how will they be able to effect so horrible a design? I will tell you my friends—*The unlimited power of taxation* will give them the command of all the treasures of the continent; *a standing army* will be wholly at their devotion, and the authority which is given them over the *militia*, by virtue of which they may, if they please, change all the officers of the militia on the continent in one day, and put in new officers whom they can better trust; by which they can subject all the militia to strict military laws, and punish the disobedient with death, or otherwise, as they shall think right: by which they can march the militia back and forward from one end of the continent to the other, at their discretion; these powers, if they should ever fall into bad hands, may be abused to the worst of purposes. Let us instance one thing arising from this right of organizing and governing the militia. Suppose a man alledges that he is conscientiously scrupulous of bearing Arms.—By the bill of rights of Pennsylvania he is bound only to pay an equivalent for his personal service.[27]—What is there in the new proposed constitution to prevent his being dragged like a Prussian soldier to the camp and there compelled to bear arms?—This will depend wholly upon the wisdom and discretion of the future legislature of the continent in the framing their militia laws; and I have lived long enough to hear the practice *of commuting personal service for a paltry fine* in time of war and foreign invasion most severely reprobated by some persons who ought to have judged more rightly on the subject—Such flagrant oppressions as these I dare say will not happen at the beginning of the new government; probably not till the powers of government shall be firmly fixed; but it is a duty we owe to ourselves and our posterity if possible to prevent their ever happening. I hope and trust that there are few persons at present hardy enough to entertain thoughts of creating any religious establishment for this country; although I have lately

read a piece in the newspaper, which speaks of *religious* as well as civil and military *offices*, as being hereafter to be disposed of by the new government;[28] but if a majority of the continental legislature should at any time think fit to establish a form of religion, for the good people of this continent, with all the pains and penalties which in other countries are annexed to the establishment of a national church, what is there in the proposed constitution to hinder their doing so? Nothing; for we have no bill of rights, and every thing therefore is in their power and at their discretion. And at whose discretion? We know not any more than we know the fates of those generations which are yet unborn.

3.3.30 It is needless to repeat the necessity of securing other personal rights in the forming a new government. The same argument which proves the necessity of securing one of them shews also the necessity of securing others. Without a bill of rights we are totally insecure in all of them; and no man can promise himself with any degree of certainty that his posterity will enjoy the inestimable blessings of liberty of conscience, of freedom of speech and of writing and publishing their thoughts on public matters, of trial by jury, of holding themselves, their houses and papers free from seizure and search upon general suspicion or general warrants; or in short that they will be secured in the enjoyment of life, liberty and property without depending on the will and pleasure of their rulers.

3.3.31 If we pass over the consideration of this subject so essential to the preservation of our liberties, and turn our eyes to the *form* of the government which the Convention have proposed to us, I apprehend that changing the prospect will not wholly alleviate our fears.—A few words on this head, will close the present letter. In the first place the office of President of the United States appears to me to be clothed with such powers as are dangerous. To be the fountain of all honors in the United States, commander in chief of the army, navy and milita, with the power of making treaties and of granting pardons, and to be vested with an authority to put a negative upon all laws, unless two thirds of both houses shall persist in enacting it, and put their names down upon calling the yeas and nays for that purpose, is in reality to be a KING as much *a King as the King of Great-Britain*, and a King too of the worst kind;—an elective King.[29]—If such powers as these are to be trusted in the hands of any man, they ought for the sake of preserving the peace of the community at once to be made hereditary.—Much as I abhor kingly government, yet I venture to pronounce where kings are admitted to rule they should most certainly be vested with hereditary power. The election of a King whether it be in America or Poland, will be a scene of horror and confusion; and I am perfectly serious when I declare that, as a friend to my country, I shall despair of any happiness in the United States until his office is either reduced to a lower pitch of power or made perpetual and hereditary.—When I say that our future President will be as much a king as the king of Great-Britain, I only ask of my readers to look into the constitu-

tion of that country, and then tell me what important prerogative the King of Great-Britain is entitled to, which does not also belong to the President during his continuance in office.—The King of Great-Britain it is true can create nobility which our President cannot; but our President will have the power of making all the *great men*, which comes to the same thing.—All the difference is that we shall be embroiled in contention about the choice of the man, whilst they are at peace under the security of an hereditary succession.—To be tumbled headlong from the pinnacle of greatness and be reduced to a shadow of departed royalty is a shock almost too great for human nature to endure.[30] It will cost a man many struggles to resign such eminent powers, and ere long, we shall find, some one who will be very unwilling to part with them.—Let us suppose this man to be a favorite with his army, and that they are unwilling to part with their beloved commander in chief; or to make the thing familiar, let us suppose, a future President and commander in chief adored by his army and the militia to as great a degree as our late illustrious commander in chief; and we have only to suppose one thing more, that this man is without the virtue, the moderation and love of liberty which possessed the mind of our late general, and this country will be involved at once in war and tyranny. So far is it from its being improbable that the man who shall hereafter be in a situation to make the attempt to perpetuate his own power, should want the virtues of General Washington; that it is perhaps a chance of one hundred millions to one that the next age will not furnish an example of so disinterested a use of great power. We may also suppose, without trespassing upon the bounds of probability, that this man may not have the means of supporting in private life the dignity of his former station; that like Caesar, he may be at once ambitious and poor, and deeply involved in debt.—Such a man would die a thousand deaths rather than sink from the heights of splendor and power into obscurity and wretchedness. We are certainly about giving our president too much or too little; and in the course of less than twenty years we shall find that we have given him enough to enable him to take all. It would be infinitely more prudent to give him at once as much as would content him, so that we might be able to retain the rest in peace; for if once power is seized by violence not the least fragment of liberty will survive the shock. I would therefore advise my countrymen seriously to ask themselves this question;—Whether they are prepared TO RECEIVE A KING? If they are[,] to say so at once, and make the kingly office hereditary; to frame a constitution that should set bounds to his power, and, as far as possible secure the liberty of the subject. If we are not prepared to *receive a king*, let us call another convention to revise the proposed constitution, and form it anew on the principles of confederacy of free republics; but by no means, under pretence of a republic, to lay the foundation for a military government, which is the worst of all tyrannies.

Yours, &c.
An Old Whig.

VI

Mr. Printer,

I think it is an observation of Dean Swift, that, in political matters, all men 3.3.32
can feel, though all cannot see.[31] Agreeably to this doctrine we find, that the necessity of giving additional powers to Congress is at length *felt* by all men, though it was not foreseen by a great number of the people. As the states, individually could not protect our trade, foreign nations, friends as well as enemies, have combined against it; and at the same time that our trade is more beneficial to any nation in Europe, than the trade of any nation in Europe is to us, because we export provisions and raw materials and receive manufactures in return: we are not suffered to be the carriers of our own produce—foreign bottoms engross the whole of our carrying trade, and we are obliged to pay them for doing that which it is the interest of every people to do for themselves. Our shipwrights are starved, our seamen driven abroad for want of employ, our timber left useless on our hands, our iron-works, once a very profitable branch of business, now almost reduced to nothing, and our money banished from the country. These with the train of concomitant evils which always attend the loss of trade, or a state of trade which is unprofitable, have justly alarmed us all; and I am firmly pursuaded that scarcely a man of common sense can be found, that does not wish for an efficient federal government, and lament that it has been delayed so long. Yet at the same time it is a matter of immense consequence, in establishing a government which is to last for ages, and which, if it be suffered to depart from the principles of liberty in the beginning, will in all probability, never return to them, that we consider carefully what sort of government we are about to form. Power is very easily encreased; indeed it naturally grows in every government; but it hardly ever lessens.

The misfortunes under which we have for some time laboured, and which 3.3.33
still press us severely, would be in a great measure alleviated, if not wholly removed, by devolving upon Congress the power of regulating trade and laying and collecting duties and imposts. If these powers were once fully vested in Congress, trade would immediately assume a new face, money and people would flow in upon us, and the vast tracts of ungranted lands would be a mine of wealth for many years to come. I am pursuaded, that with this addition to the powers of Congress, we should soon find them sufficient for every purpose; and it is very certain that if we did not find them sufficient, we could easily encrease them. But instead of being contented with this, the late convention by their proposed constitution, seem to have resolved to give the new continental government every kind of power whatsoever, throughout the United States. This power I have already attempted to shew, is not limited by any stipulations in favour of the liberty of the subject, and it is easy to shew, that it will be equally unchecked by any

restraint from the individual states. The treasure of the whole continent will be entirely at their command. "The Congress shall have power to levy and collect taxes, duties, imposts and excises." And what are the individual states to do, or how are they to subsist? may they also lay and collect taxes, duties, imposts and excises? If they should, the miserable subject will be like sheep twice shorne; the skin must follow the fleece. But the fact is, that no individual state can collect a penny, unless by the permission of Congress; for the "laws of the United States shall be the supreme law of the land, any thing in the constitution or laws of any state to the contrary, notwithstanding."[32] The laws of the individual states, will be only *Leges sub graviore Lege:* for the power of enacting laws necessarily implies the power of repealing laws; and therefore Congress, being the supreme legislatures, may annul or repeal the laws of the individual states, whenever they please. Not a single source of revenue will remain to any state, which Congress may not stop at their sovereign will and pleasure; for if any state attempt to impose a tax or levy a duty, contrary to the inclination of Congress, they have only to exert their supreme legislative power and the law imposing such tax or duty, is done away in a moment. For instance, it will very soon be found inconvenient to have two sets of excise officers in each town or county in every state, they will be in danger of clashing with each other, it will then be found "necessary and proper for carrying into execution the powers vested by the constitution in the government of the United States, or in some department or officer thereof," to forbid the individual states to levy any more excise. Congress may chuse to impose a stamp-duty. It will be very inconvenient for people to run back and forward to different offices, to procure double stamps, and therefore it will be thought "necessary and proper" to forbid any state to meddle with stamp-duties. The same will be the case with many other taxes. They will be in danger of clashing with each other, if Congress and the several states should happen to lay taxes on the same article. The States therefore individually, will be restrained from imposing any taxes upon such articles as Congress shall think proper to tax. They must then try to find out other articles for taxation, which Congress have not thought proper to touch. This I fear will be a difficult task: for the expensive court to be maintained by the great president, the pay of the standing army and the numerous crouds of hungry expectants, who have lost their all, and it will be said, have lost it by their zeal for the new constitution, must necessarily employ the sharpest wits among their ablest financiers, to devise every possible mode of taxation; and besides, if an individual state should hit upon a new tax that should happen to be productive, there is no doubt but it would soon be taken from it and appropriated to the use of the United States. The inhabitants of the TEN MILE SQUARE, would find ways and means to dispose of all the money that could possibly be raised in every part of the United States. What then will become of the separate governments? They will be annihilated; absolutely

annihilated; for no man will ever submit to the wretchedness and contempt of holding any office under them.

3.3.34 The advocates of the proposed constitution, seem to be aware of the difficulty I have hinted at, and therefore it is, I presume, that in conversation as well as in their publications, we are told that under the proposed constitution,"direct taxation will be unnecessary"; that "it is probable the principal branch of revenue will be duties on imports."[33] Some of those who have used such language in public and private, I believe to be very honest men; and I would therefore ask of them, what security they can give us, that the future government of the continent will in any measure confine themselves to the duties upon imports, or that the utmost penny will not be exacted which can possibly be collected either by direct or indirect taxation? How can they answer for the conduct of our future rulers? We have heard enough of these fair promises for the good behaviour of men in office, to learn to doubt of their fulfilment[;] unless we guard ourselves by much better security, there will be no bounds to the new government. They will not have as much to spare for the separate states to collect as Lazarus picked up of the fragments from the rich man's table. There are mouths at this moment gaping in the United States for all that can possibly be collected;—a confederacy is already formed for dividing the public cake to the last crum; and I wish they may not quarrel for more.

3.3.35 But if I were mistaken in this opinion; if in the language of these gentlemen, "it is probable that the principal branch of the public revenue will be duties on imports";—if it is probable that these with the back lands and the post-office will be sufficient, where was the necessity of being in such haste to grant more;—to grant all without limits or restrictions? Men do not usually give up their whole purse where they can pay with part. Why might we not try at least how far the customs and back lands would go before we give all away from the separate states, without reserving any thing for their support.

3.3.36 The true line of distinction which should have been drawn in describing the powers of Congress, and those of the several states, should have been that between internal and external taxation.[34] I am persuaded that the existence of the several states in their separate capacities, and of the United States in their collective capacity, depends upon the maintaining such distinction. Without the power of imposing duties on foreign commerce and regulating trade, the United States will be weak and contemptible, and, indeed, their union must be speedily dissolved: And on the other hand, if the Legislature of the United States shall possess the powers of internal as well as external taxation, the individual states in their separate capacities, will be less than the shadows of a name.

3.3.37 I observe that the late delegates of Connecticut, in their letter to the Governor, speak of the power of direct taxation as an authority which need not be exercised if each state will "furnish the quota."[35] Yet there is no

doubt but they may exercise this power if they choose to do it; and they alone will have the right of judging what quotas the several states shall be required to furnish. They may ask as much as they please, and if the states do not furnish all they ask, they may tax at their pleasure; under these circumstances the power of internal taxation will undoubtedly by exercised by the Continental Legislature. If it be said that it is to be expected that the Congress will exercise this power with moderation, I venture to pronounce that those who indulge such hopes, are not acquainted with the principles of human nature. Independent of the multitudinous expectations which the followers of the proposed Constitution entertain in their own favor, which alone, if gratified, would consume the treasures of two such continents as this; there is a spirit of rivalship in power, which will not suffer two suns to shine in the same firmament, one will speedily darken the other, and the individual states will be as totally eclipsed, as the stars in the meridian blaze of the sun. We have seen too much of this spirit in the several states, under the present loose and futile confederation. A jealousy of the powers of Congress in the separate states, which is founded in the same rivalship of power, and which, however contemptible it may appear, was alike founded in the principles of human nature, may furnish us an exemplary lesson upon this head: And when we verge to the other extreme by vesting all power in Congress, we shall find them equally jealous of any power in the individual states, and equally possessed of the same spirit of rivalship, which heretofore denied the necessary supplies from the states to Congress.—We shall never be able to support the collective powers of the United States in Congress, and the powers of the individual states in their separate capacities, without drawing the line fairly between them. If we leave the states individually to the mercy of the Continental Government, they will be stript of the last penny which is necessary for their support; if we give all powers to one, there will be nothing left for the others. The lust of dominion, where it is indulged, will swallow up the whole.

3.3.38 But I shall be told that if Congress are left to depend upon requisitions from the individual states for any part of the necessary supplies, the same difficulty will remain which has hitherto existed; and I may be asked, what shall we do if the supplies should fall short? I answer that although nothing but a very serious necessity of money for continental purposes will ever procure supplies upon requisition from the separate states, yet when that necessity exists in any degree that is really alarming to the whole community, I do not think that such supplies are to be dispaired of. We have seen many instances of aid being furnished, even voluntarily upon pressing occasions, which should teach us to rely on the exertions of the states upon occasions of real and not mere imaginary necessity. One thing will certainly follow from the Continental Government being restrained to external taxation;—that it will be under the necessity of exercising more oeconomy than it has done, especially during the late war. We have been witnesses of

such a profuse expenditure of public money at some periods, as these states could never support. This profusion ought to convince us that if all the treasures of the continent are intrusted to the power of Congress, there is too much reason to fear that the whole will be consumed by them, and nothing left to the individual states; and judging from past experience we may venture to presage that the people will be fleeced without mercy, if no check is maintained upon the power of Congress in the articles of taxation.

3.3.39 We ought to be very fully convinced of an absolute necessity existing before we entrust the whole power of taxation to the hands of Congress; and the moment we do so, we ought by consent to annihilate the individual states; for the powers of the individual states will be as effectually swallowed as a drop of water in the ocean; and the next consequence will be a speedy dissolution of our republican form of government.

Yours, &c.
An Old Whig.

VII

Mr. Printer,

3.3.40 Many people seem to be convinced that the proposed constitution is liable to a number of important objections; that there are defects in it which ought to be supplied, and errors which ought to be amended; but they apprehend that we must either receive this constitution in its present form, or be left without any continental government whatsoever. To be sure, if this were the case, it would be most prudent for us, like a man who is wedded to a bad wife, to submit to our misfortune with patience, and make the best of a bad bargain. But if we will summon up resolution sufficient to examine into our true circumstances, we shall find that we are not in so deplorable a situation as people have been taught to believe, from the suggestions of interested men, who wish to force down the proposed plan of government without delay, for the purpose of providing offices for themselves and their friends. We shall find, that, with a little wisdom and patience, we have it yet in our power, not only to establish a federal constitution, but to establish a good one.

3.3.41 It is true that the continental convention has directed their proposed constitution to be laid before a convention of delegates to be chosen in each state, "for their assent and ratification," which seems to preclude the idea of any power in the several conventions, of proposing any alterations, or indeed of even rejecting the plan proposed, if they should disapprove of it. Still, however, the question recurs, what authority the late convention had to bind the people of the United States, to any particular form of govern-

ment, or to forbid them to adopt such form of government as they should think fit. I know it is a language frequent in the mouths of some heaven-born PHAETONS amongst us, who like the son of Apollo, think themselves entitled to guide the chariot of the sun; that common people have no right to judge of the affairs of government; that they are not fit for it; that they should leave these matters to their superiors.[36] This however, is not the language of men of real understanding, even among the advocates for the proposed constitution; but these still recognize the authority of the people, and will admit, at least in words, that the people have a right to be consulted. Then I ask, if the people in the different states have a right to be consulted, in the new form of continental government, what authority could the late convention have to preclude them from proposing amendments to the plan they should offer? Had the convention any right to bind the people to the form of government they should propose? Let us consider this matter.

3.3.42 The late convention were chosen by the general assembly of each state; they had the sanction of Congress;—for what? To consider what alterations were necessary to be made in the articles of confederation. What have they done? They have made a new constitution for the United States. I will not say, that in doing so, they have exceeded their authority; but on the other hand, I trust that no man of understanding amongst them will pretend to say, that any thing they did or could do, was of the least avail to lessen the rights of the people to judge for themselves in the last resort. This right, is perhaps, unalienable, but at all events, there is no pretence for saying that this right was ever meant to be surrendered up into the hands of the late continental convention.

3.3.43 The people have an undoubted right to judge of every part of the government which is offered to them: No power on earth has a right to preclude them; and they may exercise this choice either by themselves or their delegates legally chosen to represent them in the State-Convention.—I venture to say that no man, reasoning upon *revolution* principles, can possibly controvert this right.

3.3.44 Indeed very few go so far as to controvert the right of the people to propose amendments; but we are told that the thing is impracticable; that if we begin to propose amendments there will be no end to them; that the several states will never agree in their amendments; that we shall never unite in any plan; that if we reject this we shall either have a worse or none at all; that we ought therefore to adopt this *at once*, without alteration or amendment.—Now these are very kind gentlemen, who insist upon doing so much good for us, whether we will or not. Idiots and maniacs ought certainly to be restrained from doing themselves mischief, and should be compelled to that which is for their own good. Whether the people of America are to be considered in this light, and treated accordingly, is a question which deserves, perhaps, more consideration than it has yet received. A contest between the patients and their doctors, which are mad or which are

fools, might possibly be a very unhappy one. I hope at least that we shall be able to settle this important business without so preposterous a dispute. What then would you have us do, it may be asked? Would you have us adopt the proposed Constitution or reject it? I answer that I would neither wish the one nor the other. Though I would be far from pretending to dictate to the representatives of the people what steps ought to be pursued, yet a method seems to present itself so simple, so perfectly calculated to obviate all difficulties, to reconcile us with one another, and establish unanimity and harmony among the people of this country, that I cannot forbear to suggest it. I hope that most of my readers have already anticipated me in what I am about to propose. Whether they have or not, I shall venture to state it, in the humble expectations that it may have some tendency to reconcile honest men of all parties with one another.

The method I would propose is this— 3.3.45

1st. Let the Conventions of each state, as they meet, after considering the proposed Constitution, state their objections and propose their amendments.

So far from these objections and amendments clashing with each other in irreconcileable discord, as it has been too often suggested they would do, it appears that from what has been hitherto published in the different states in opposition to the proposed Constitution, we have a right to expect that they will harmonize in a very great degree. The reason I say so, is, that about the same time, in very different parts of the continent, the very same objections have been made, and the very same alterations proposed by different writers, who I verily believe, know nothing at all of each other, and were very far from acting a premeditated concert, and that others who have not appeared as writers in the newspapers, in the different states, have appeared to act and speak in perfect unison with those objections and amendments, particularly in the article of a Bill of Rights. That in short, the very same sentiments seem to have been echoed from the different parts of the continent by the opposers of the proposed Constitution; and these sentiments have been very little contradicted by its friends, otherwise than by suggesting their fears, that by opposing the Constitution at present proposed, we might be disappointed of any federal government or receive a worse one than the present.—It would be a most delightful surprize to find ourselves all of one opinion at last; and I cannot forbear hoping that when we come fairly to compare our sentiments, we shall find ourselves much more nearly agreed than in the hurry and surprize in which we have been involved on this subject, we ever suffered ourselves to imagine.[37]

2d. When the Conventions have stated these objections and amendments, 3.3.46
let them transmit them to Congress and adjourn, praying that Congress will direct another Convention to be called from the different states, to consider of these objections and amendments, and pledging themselves to abide by whatever decision shall be made by such future Convention on the subject;

whether it be to amend the proposed Constitution or to reject any alteration and ratify it as it stands.

3.3.47 3d. If a new Convention of the United States should meet, and revise the proposed Constitution, let us agree to abide by their decision.—It is past a doubt that every good citizen of America pants for an efficient federal government—I have no doubt we shall concur at last in some plan of continental government, even if many people could imagine exceptions to it; but if the exceptions which are made at present, shall be maturely considered and even be pronounced by our future representatives as of no importance; (which I trust they will not) even in that case, I have no doubt that almost every man, will give up his own private opinion and concur in that decision.

3.3.48 4th. If by any means another Continental Convention should fail to meet, then let the Conventions of the several states again assemble and at last decide the great solemn question whether we shall adopt the Constitution now proposed, or reject it? And, whenever it becomes necessary to decide upon this point, one at least who from the beginning has been invariably anxious for the liberty and independence of his country, will concur in adopting and supporting this Constitution, rather than none;—though I confess I could easily imagine, some other form of confederation, which I should think better entitled to my hearty approbation;—and indeed I am not afraid of a worse.

I am, &c.
An Old Whig.

VIII[38]

Mr. Printer,

3.3.49 It is the fate of political controversies to begin with argument and end with abuse; and hence we find, in many instances, that a subject which for a time, has engaged the most earnest attention of the people, is at length quitted with horror and disgust. The question, however, concerning the total adoption of the plan of government, proposed by the late federal convention, is too important for good men to suffer themselves to be diverted from giving it a full consideration by the bounding of squibs or the whizzing of political firebrands. I therefore persuade myself that a few candid observations on this subject will yet be heard with attention.

3.3.50 The real question is this;—Whether the people of this country ought to adopt the proposed constitution in its present form, without limitation or alteration, or whether we ought to insist upon amendments being made previous to its adoption.

Most men seem to agree that amendments ought to be made in the proposed plan in some stage of the business; and all seem agreed that an efficient form of continental government ought to be established. Shall we then first adopt the constitution and afterwards amend it; or shall we first amend it and afterwards adopt it? Let us for a moment consider the propriety of adopting it first, and trusting to its being afterwards amended. These necessary amendments, after the constitution is adopted, can only be made in one of two ways;—either by our future rulers in the continental legislature by their own act—or in the way provided for in the fifth article, by a convention to be called for proposing amendments, whenever two-thirds of both houses shall deem it necessary, or whenever the legislatures of two-thirds of the states shall make application for that purpose, such amendments afterwards to be valid if ratified by the legislatures of three-fourths of the states, or by conventions in three-fourths thereof, if Congress should think proper to call them. This latter mode is so intricate, that an attempt to investigate it is like endeavouring to trace the windings of a labyrinth, and I have therefore observed that people willingly turn aside from the subject, as confused and disgusting. Some former observations on this article[39] I found were very little attended to: However I will attempt once more to find a clue to its mazes, after I shall first have considered that more inviting ground of expectation to which most of those who assume the name of federalists turn their eyes with so much confidence.

First then, the general expectation seems to be that our future rulers will rectify all that is amiss. If a bill of rights is wanting, they will frame a bill of rights. If too much power is vested in them, they will not abuse it; nay, they will divest themselves of it. The very first thing they will do, will be to establish the liberties of the people by good and wholesome ordinances, on so solid a foundation as to baffle all future encroachments from themselves or their successors. Much good no doubt might be done in this way; if Congress should possess the most virtuous inclinations, yet there are some things which it will not be in their power to rectify. For instance; *the appellate jurisdiction both as to law and fact*, which is given to the supreme court of the continent, and which annihilates the trial by jury in all civil causes, the Congress can only modify:—They cannot extinguish this power, so destructive to the principles of real liberty. It would not by any means be extravagant to say, that a new continental convention ought to be called, if it were only for the sake of preserving that sacred palladium—THE INESTIMABLE RIGHT OF TRIAL BY JURY.—But even if we were to delude ourselves so far as to believe that it would be entirely in the power of the future legislature to set every thing right, to build up our liberties against all invasions, and to protect us from every political calamity, still we ought not to repose all our liberty and all our happiness in the virtue of our future rulers. I speak not with reference to any particular set of men. I pretend not to know who will be our rulers one year hence. In the state of Pennsylvania I have seen

3.3.51

the administration of our constitution in the hands of its bitterest enemies, during near one half of its existence; and I shall not be at all surprized to find that if the new continental government shall be set a-going, that the jockies who at present have vaulted into the saddle, should be the first to be thrown into the dirt and trampled upon; nor, on the other hand, that some of those who are foremost in contending for a permanent security to the rights of the people, should be in the first rank of oppressors. These things have frequently happened; and the only safe way of reasoning on political subjects is, to consider men, abstractly as men, with like passions and infirmities throughout the world, in every age, and every country; and to believe that the same guards and checks against arbitrary power, which were necessary two thousand years ago, are equally necessary at present, and will be so two thousand years hence. Idolatry is the parent of errors in politics as well as religion;—and an implicit confidence in our rulers now, will be abused as much as implicit confidence in priests ever was in the days of superstition. I know well that instances of political moderation may be found, and a tyrant has before now descended from the plenitude of power, satiated with dominion, or worn out with care; but there is not one instance on record in all history of a number of men voluntarily abandoning the powers of an aristocracy. Look at the Decemviri, look at the thirty tyrants of Athens, look at all the lordly aristocracies that ever existed, and shew me one instance—such an instance cannot be shewn. Nay farther, a single monarch has many times used his power with moderation; but a number of men combined in an aristocracy, never knew what moderation meant. They are all struggling to be most powerful, all aiming to enrich themselves and provide for their friends, and all of them plundering the people. And shall we foolishly, after so many thousand examples, trust to the virtue and moderation of our future rulers, to divest themselves of those powers which may be abused to our prejudice, and are no way useful to our protection? Not to insist upon Swift's ludicrous tale of Jack's hanging himself at the instigation of Humphry Hocus, on the promise of being cut down before he should be dead, and when he had hanged himself, of being left to kick his heels in the air,[40] the moral of which, by the bye, is strictly founded in human nature;—let us attend to a more serious fable.—"A man, says Aesop, coming into a wood, begged the trees to grant him the favor of a handle to his axe. The whole forest consented; upon which he provided himself with a strong handle; which he had no sooner done, than he began to fell the trees without number, then the trees, though too late, repented of their weakness, and an universal groan was heard throughout the forest. At length, when the man came to cut down the tree which had furnished him with the handle, the trunk fell to the ground uttering these words: Fool that I was! I have been the cause of my own destruction."[41] If we perish in America, we shall have no better comfort than the same mortifying reflection, that we have been the cause of our own destruction.

I have said that many of the liberties which, by the proposed constitution, are to be surrendered up into the hands of our rulers, will be of no use towards the protection of the people; and a little reflection will convince us, that it is certainly the case. If, indeed, government were really strengthened by such surrender, if the body of the people were made more secure, or more happy by the means, we ought to make the sacrifice. An individual ought to submit to be tossed about, imprisoned and treated injuriously, if the good of his country should require it; and every individual in the community ought to strip himself of some convenience for the sake of the public good. 3.3.52

I know it is an error not uncommon to believe, that a government is the more powerful in proportion as it is more tyrannical; but this is not the case: so far from it, that it has always been found, that free countries have been able to exert powers far superior to those in which a more absolute government prevailed. For instance, a senate which is master of its own elections, without any or with very little dependence on the people, would not be able to exert as much force as a senate which is freely elected by the people; because the cheerful support which would be yielded in the latter case, would far exceed that which could be exacted by the mere force of authority. Again; how could the stripping people of the right of trial by jury conduce to the strength of the state? Do we find the government in England at all weakened by the people retaining the right of trial by jury? Far from it. Yet these things which merely tend to oppress the people, without conducing at all to the strength of the state, are the last which aristocratic rulers would consent to restore to the people; because they encrease the personal power and importance of the rulers. Judges, unincumbered by juries, have been ever found much better friends to government than to the people. Such judges will always be more desireable than juries to a self-created senate, upon the same principle that a large standing army, and the entire command of the militia and of the purse, is ever desireable to those who wish to enslave the people, and upon the same principle that a bill of rights is their aversion. 3.3.53

In like manner, if we should trace the several branches of the proposed constitution, which are obnoxious to the liberties of the people, we shall find them to consist of such articles as are rather fitted to encrease the powers of the rulers, than the strength of the nation. Union is the great source of strength to a nation, not vassalage. To an aristocratic government vassalage is the great object even at the expence of union among the people. We ought not, therefore, by any means to rely upon the virtue of our future rulers for a reformation of those things which at present are amiss in the proposed constitution. The president and senate will ever be grasping at more and more power until they are completely masters of the people, and the president at last master of all. 3.3.54

Let us then turn to the article in the proposed constitution, which provides for the making alterations at some future period; and let us figure to 3.3.55

ourselves the time when two-thirds of both houses of Congress shall think it necessary to call a convention, or two-thirds of the legislatures of the individual states shall apply for the calling of a convention, and when a continental convention shall agree upon amendments, and when the legislatures of three-fourths of the states, or three-fourths of the conventions to be called in the several states, if Congress shall prefer that mode of proceeding, shall ratify such amendments; and again, after all these strainings, and filtrings, and refinings, of the hopes and expectations of the people through the channels of power, when the amendments so asked for, proposed, digested, twistificated, altered, and at last ratified, will be of any essential importance. For my part I would full as soon sit down and take my chance of winning an important privilege to the people, by the casting of the dice 'till I could throw sixes an hundred times in succession.—There is no doubt but the thing has been purposely contrived to make alterations extremely difficult; and so it certainly ought to be if the proposed constitution were a good one. I do not therefore so much blame the late federal convention for making their constitution very difficult of alteration, as I insist upon it as an argument in favor of making our amendments beforehand. A machine which cannot be taken to pieces after it is once set a-going, ought to be very well finished at first.

3.3.56 Yet this is not all the difficulty. Inveterate power is at all times very hard to be controuled. Habits, connexions, dependence, and a thousand circumstances in course of time, rivet the chains of slavery 'till we grow either callous to their galling, or too feeble to shake them off, or too listless to resist. Ask the beaten Turk to resume his liberty, or the tired horse to resume his pristine freedom.—As well might you ask the galled sons of America, a few years hence, to assert the native rights of men, if the proposed constitution be once fixed upon us. It will be extremely difficult to change it for the better even in the beginning; but in a little time it will become utterly impossible.

3.3.57 A little prudence, a little patience, and a little serious reflection, would lead us to concur in calling a new convention, to revise the constitution proposed to us. That convention, I have no doubt, if fully, freely, and deliberately chosen, would concur in some essential amendments; and we might yet be a united and a happy people.

Yours, &c.
An Old Whig.

1. On the general problem of founding and the differences between ancient examples, including that of Lycurgus, and this new American founding, see *The Federalist* no. 38, 239–41; on amendments, see no. 80, 590–94; and Poplicola's reply to this essay in the *Massachusetts Centinel* 31 October 1787.

2. Poplicola argues that another principle will operate: "It is always to be remembered that the members of this body are under the instructions of their constituents, and it cannot be forgotten, that the love of popularity, next to the love of

interest, is the strongest principle of the human heart—Ambition will find its object, as much in the applause of the world, as in the continuance and extension of any official acquirement, supposing honour and integrity to have no influence." Ibid.

3. See Lowndes 5.12.1. Such language was in fact very rare, although the Federalists did argue that very great reliance ought to be placed on the wise and patriotic men who drafted the Constitution. (See Federal Republican 3.6.5 n. 4). A week after this essay was published, however, Caesar confessed that he considered the multitude "in general as very ill qualified to judge for themselves what government will best suit their peculiar situations; nor is this to be wondered at. The science of government is not easily understood." Ford, *Essays* 287; see also Cato II, 2.6.8 n. 6, Centinel I, 2.7.3. Publius' argument in *The Federalist* no. 49 is considerably more subtle.

4. *Votes and Proceedings of the House of Representatives of the Province of Pennsylvania* (Philadelphia 1752–76) IV, 501. Cf. *The Federalist* no. 8, 45: "Safety from external danger is the most powerful director of national conduct. Even the ardent love of liberty will, after a time, give way to its dictates. The violent destruction of life and property incident to war—the continual effort and alarm attendant on a state of continual danger, will compel nations the most attached to liberty, to resort for repose and security, to institutions, which have a tendency to destroy their civil and political rights. To be more safe they, at length, become willing to run the risk of being less free."

5. McMaster and Stone 143. This is Wilson's speech of 6 October 1787, commented on in detail in Centinel II. See Centinel II, 2.7.35.

6. Ibid.

7. Wilson does not use the term "expressly." See *The Federalist* no. 44, 303–4.

8. Montesquieu does not say this. See *The Spirit of Laws* II, ch. 2; XI, ch. 6. The writer may have been thinking of someone like Locke (*The Second Treatise of Civil Government* XI) or Blackstone (*Commentaries* I, 46, 49, 52).

9. An Old Whig apparently does not follow the Pennsylvania Constitutionalist party in his view of the Pennsylvania constitution, suggesting perhaps that he is from out of state or an individual not active in Pennsylvania politics. See Centinel IX, 2.7.128–34.

10. The constitutional phrase is "exclusive legislation in all cases whatsoever."

11. For argument in rebuttal to the following remarks on the "necessary and proper" and "supremacy" clauses, see *The Federalist* nos. 33 and 34. See Brutus I, 2.9.8–9 and n. 7.

12. The Declaratory Act, 1766.

13. Job 32:9.

14. See above, n. 7.

15. McMaster and Stone 143–44.

16. Ibid. 145.

17. Federalist expressions of anything like indifference to trial by jury are rare. See, however, the reservations expressed by Noah Webster, writing as "America" in the New York *Daily Advertiser* 31 December 1787 (reprinted in Webster's *Collection of Essays* [1790] 146–47). See also Alfredus in the New Hampshire *Freeman's Oracle* 18 January 1788, quoted by A [New Hampshire] Farmer 4.17.16. The Federalists did argue that juries were often not used and were not proper in admiralty and chancery jurisdictions (for references, see Federal Farmer II, 2.8.19 n. 16); that practice regarding use of juries in civil cases varied widely among the states (see Wilson, McMaster and Stone 353); that trial by jury of the vicinage was no longer important (Ford, *Pamphlets* 53 [A Citizen of America]); and that juries might be biased (Elliot IV, 295 [Barnwell]). See Plebeian 6.11.15 n. 13.

18. See Henry Hallam, *The Constitutional History of England* (New York 1886) I, 30.

19. McMaster and Stone 145 (a close paraphrase).

20. Ecclesiastes 2:18–19.

21. This paper was also printed as a broadside (Evans, *Early American Imprints* no. 20379).

22. Cf. *The Federalist* no. 19, 122–23; Newport Man 4.25.3; [Maryland] Farmer III, 5.1.52–53; Henry 5.16.8.

23. Wilson, "Address to the Citizens of Philadelphia," McMaster and Stone 143 (a close paraphrase, but Wilson writes "representatives" not "rulers"). See Federal Farmer IV, 2.8.50 nn. 38–40.

24. This paper was also printed as a broadside (Evans, *Early American Imprints* no. 20380).

25. The original reads "advantages."

26. See Philadelphiensis I, 3.9.2.

27. Constitution of Pennsylvania, 1776, Declaration of Rights, sec. 8.

28. I have not found this piece.

29. Publius compares the proposed presidency with the British monarchy in *The Federalist* no. 69; see also Philadelphiensis XII, 3.9.96 n. 37.

30. Publius sees the problem but finds the solution in the President's eligibility for reelection. "Would it promote the peace of the community, or the stability of the government, to have half a dozen men who had had credit enough to be raised to the seat of the supreme magistracy, wandering among the people like discontented ghosts, and sighing for a place which they were destined never more to possess?" *The Federalist* no. 72, 438.

31. The source of this comment has not been found.

32. Cf. *The Federalist* nos. 32–34; Federal Farmer III, 2.8.39 n. 29.

33. The latter quotation is from the letter of Sherman and Ellsworth to the Governor of Connecticut; see below, note 35. Sherman elaborated this argument in his Letters from A Citizen of New Hampshire, Ford, *Essays* 239. On the question of the need for direct taxation, see above, Centinel II, 2.7.52 n. 30.

34. Cf. *The Federalist* no. 30, 190; Brutus V, 2.9.63.

35. Letter from the Hon. Roger Sherman and the Hon. Oliver Ellsworth, Esqs., delegates from the State of Connecticut, in the late federal convention, to His Excellency, the Governor of Said State, 26 September 1787, Elliot I, 491–92; cf. Federal Farmer III, 2.8.39 n. 28.

36. See above, note 3.

37. The original reads, "than in the hurry . . . than we ever suffered. . . ."

38. This essay is numbered VII in the newspaper.

39. See above, I, 3.3.1–5.

40. John Arbuthnot, *An Appendix to John Bull Still in His Sences* or *Law Is a Bottomless Pit* (London 1712) ch. 3, 14–20.

41. Benjamin Cole, ed., *Select Tales and Fables with Prudential Maxims in Prose and Verse* (London 1746), fable 10, "The Clown and the Word."

Essay by Montezuma

(PHILADELPHIA) INDEPENDENT GAZETTEER
17 October 1787

Irony was not a strong point in Anti-Federalist writing. This essay by Montezuma is in the form of a Federalist explanation of the Constitution and of its underlying anti-democratic intentions. It is described by Main as "the most unequivocal printed criticism of the Constitution from the democratic point of view. . . ."[1] However, despite his inclusion in both the Borden and the Kenyon collections, Montezuma is a good deal less penetrating than, for example, Aristocrotis, whose essay is similar in type and general argument.[2] But he does present a view of the illicit designs of the "well born" and "better kind" of people that must have been shared by many (though no one knows how many). His argument concerning the jurisdiction of the federal courts is interesting and substantial; and his description of the workings of the system of representation presents the underside, as it were, of the arguments on representation put forward by writers like The Federal Farmer and Melancton Smith.

1. Main, *Antifederalists* 173.
2. Borden, *The Antifederalist Papers* 20–30; Kenyon, *The Antifederalists* 61–67; see Aristocrotis 3.16.

Mr. Oswald.

That the enclosed defence may be laid open to the general scrutiny of my fellow citizens, I request a place for it in your paper.

Lycurgus.

We the Aristicratic party of the United States, lamenting the many inconveniencies to which the late confederation subjected the *well-born,* the *better kind* of people bringing them down to the level of the *rabble,* and holding in utter detestation, that frontispiece to every bill of rights—"that all men are born equal," beg leave (for the purpose of drawing a line be- 3.4.1

tween such as we think were *ordained* to govern, and such as were *made* to bear the weight of government without having any share in its administration) to submit to *our friends* in the first class for their inspection, the following defence of our *monarchical, aristocratical democracy.*

3.4.2 1st. As a majority of all societies consist of men who (though totally incapable of thinking or acting in governmental matters) are more readily led than driven, we have thought meet to indulge them in something like a democracy in the new constitution, which part we have designated by the popular name of the House of Representatives; but to guard against every possible danger from this *lower house*, we have subjected every bill they bring forward, to the double negative of our *upper house* and president—nor have we allowed the *populace* the right to elect their representatives annually, as usual, lest this body should be too much under the influence and controul of their constituents, and thereby prove the "weatherboard of our grand edefice, to shew the shiftings of every fashionable gale,"[1] for we have not yet to learn that little else is wanting, to aristocratize the most democratical representative than to make him somewhat independent of his *political creators*—We have taken away that rotation of appointment which has so long perplexed us—that *grand engine* of popular influence; every man is eligible into our government, from time to time for life—this will have a two-fold good effect; first it prevents the representatives from mixing with the *lower class*, and imbibing their foolish sentiments, with which they would have come charged on re-election.

3.4.3 2d. They will from the perpetuality of office be under *our* eye, and in a short time will think and act like *us*, independently of popular whims and prejudices; for the assertion "that evil communications corrupt good manners,"[2] is not more true than its reverse. We have allowed this house the power to impeach, but we have tenaciously reserved the right to try. We hope gentlemen, you will see the policy of this clause—for what matters it who accuses, if the accused is tried by this friends—In fine, this *plebian house* will have little power, and that little be rightly shaped by our house of *gentlemen*, who will have a very extensive influence, from their being chosen out of the *genteeler class*, and their appointment being almost a life, one as seven years is the calculation on a man's life, and they are chosen for six: It is true, every third senatorial seat is to be vacated duennually, but two-thirds of this influential body will remain in office, and be ready to direct or (if necessary) bring over to the good old way, the young members, if the old ones should not be returned; and whereas many of our brethren, from a laudable desire to support their rank in life above the commonality, have not only deranged their finances, but subjected their persons to indecent treatment (as being arrested for debt, etc.) we have framed a privilege clause, by which they may laugh at the fools who trusted them; but we have given out that this clause was provided, only that the members might be able without interruption, to deliberate on the important business of their country.

We have frequently endeavoured to effect in our respective states, the happy discrimination which pervades this system, but finding we could not bring the states into it individually, we have determined, and in this our general plan we have taken pains to leave the legislature of each *free and independent* state, as they now call themselves, in such a situation that they will eventually be absorbed by our *grand continental vortex*, or dwindle into petty corporations, and have power over little else than *yoaking hogs* or determining the width of *cart wheels*—but (aware that an intention to annihilate state legislatures, would be objected to our favorite scheme) we have made their existence (as a *board of electors*) necessary to ours; this furnishes us and our advocates with a fine answer to any clamours that may be raised on this subject, viz.—We have so interwoven continental and state legislatures that they cannot exist separately; whereas we in truth, only leave them the power of electing us, for what can a provincial legislature do when we possess "the exclusive regulation of external and internal commerce, excise, duties, imposts, post-offices and roads["]; when we and we alone, have the power to wage war, make peace, coin money (if we can get bullion) if not, borrow money, organize the militia and call them forth to execute our decrees, and crush insurrections assisted by a noble body of veterans subject to our nod, which we have the power of raising and keeping even in the time of peace. What have we to fear from state legislatures or even from states, when we are armed with such powers, with a president at our head? (a name we thought proper to adopt in conformity to the prejudices of a silly people who are so foolishly fond of a Republican government, that we were obliged to accommodate in names and forms to them, in order more effectually to secure the substance of our proposed plan, but we all know that Cromwell was a King, with the title of protector.) I repeat it, what have we to fear armed with such powers, with a president at our head who is captain-general of the army, navy and militia of the United States, who can make and unmake treaties, appoint and commission ambassadors and other ministers, who can grant or refuse reprieves or pardons, who can make judges of the supreme and other continental courts, in short who will be the source, the fountain of honor, profit and power, whose influence like the rays of the sun, will diffuse itself far and wide, will exhale all *democratical vapours* and break the *clouds of popular insurrection?* But again gentlemen, our judicial power is a strong work, a masked battery, few people see the guns we can and will ere long play off from it; for the judicial power embraces every question which can arise in law or equity, under this constitution and under the laws of "the United States"[3]—(which laws will be you know, the supreme laws of the land)—This power extends to all cases, affecting ambassadors or other public ministers, and "consuls to all cases of admiralty and maratime jurisdiction—to controversies to which the United States are a party, to controversies between two or more states, between a state and citizens of another state, between citizens of different

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states, between citizens of the same state claiming lands under grants of different states, and between a state or the citizens thereof and foreign states, citizens or subjects."

3.4.5 Now, can a question arise in the colonial courts, which the ingenuity or sophistry of an able lawyer may not bring within one or other of the above cases? Certainly not. Then our court will have original or appellate jurisdiction in all cases—and if so how fallen are state judicatures—and must not every provincial law yield to our supreme fiat? Our constitution answers yes—then how insignificant will the makers of these laws be—it is in the nature of power to create influence—and finally we shall entrench ourselves so as to laugh at the cabals of the commonalty—a few regiments will to at first, it must be spread abroad that they are absolutely necessary to defend the frontiers. Now a regiment and then a legion must be added quietly, bye and bye a frigate or two must be built, still taking care to intimate that they are essential to the support of our revenue laws and to prevent smuggling. We have said nothing about a bill of rights, for we viewed it as an eternal clog upon our designs—as a lock chain to the wheels of government—though by the way as we have not insisted on rotation in our offices, the simile of a wheel is ill. We have for some time, considered the freedom of the press as a great evil—it spreads information, and begets a licentiousness in the people which needs the rein more than the spur; besides a daring printer may expose the plans of government and lessen the consequence of our president and senate; for these and many other reasons we have said nothing with respect to the "right of the people to speak and publish their sentiments," or about their "palladiums of liberty," and such stuff. We do not much like that sturdy privilege of the people—the right to demand the writ of *habeas corpus*—we have therefore reserved the power of refusing it in cases of rebellion, and you know we are the judges of what is rebellion. Things as yet are well—Our friends we find have been assiduous in representing our federal calamities, until at length the people at large frightened by the gloomy picture on one side, and allured by the prophecies of some of our fanciful and visionary adherents on the other, are ready to accept and confirm our proposed government without the delay or forms of examination, which was the more to be wished as they are wholly unfit to investigate the principles or pronounce on the merit of so exquisite a system. Impressed with a conviction that this constitution is calculated to restrain the influence and power of the LOWER CLASS—to draw that *discrimination* we have so long sought after, to secure to our friends *privileges and offices*, which were not to be valued on under the former government, because they were in common—to take the burthen of *legislation and attendance on public business* off the commonalty, who will be much better able thereby to prosecute with effect their private business, to destroy that *political thirteen headed monster* the state sovereignties, to check the *licentiousness* of the people by

making it dangerous to *speak or publish* daring or tumultuary sentiments, to enforce obedience to laws by a *strong executive*, aided by *military pensioners*, and finally to promote the public and private interests of the *better kind* of people. We submit it to your judgement to take such measure for its adoption as you in your wisdom may think fit.

Signed by unanimous order of the lords
spiritual and temporal
Montezuma, President.

1. The source of this quotation has not been found.
2. 1 Corinthians 15:33.
3. See Crosskey, *Politics and the Constitution* I, ch. 21.

Essay of A Democratic Federalist

PENNSYLVANIA HERALD
17 October 1787

Like many other Anti-Federalists, A Democratic Federalist treats James Wilson's discussion of a bill of rights, the federal judiciary, and a standing army. Only with respect to the second (3.5.3–9) does he add significantly to the Anti-Federalist argument; and in a technical but pointed and well-informed discussion of the need for a trial by jury in civil cases he supplements the discussion of The Federal Farmer and others. He investigates the implications of an appellate jurisdiction as to both law and fact, which is both contrary to common law principles and undesirable on broader ground. The essay first appeared in the *Pennsylvania Herald* 17 October 1787, from which it is taken here.[1] While the author is unknown, he may well have been Richard Henry Lee if, as seems probable, A Democratic Federalist was also Cincinnatus, (see below, 6.1), whose essays continued at length the argument against Wilson.

1. The essay was reprinted in the *Pennsylvania Packet* 23 October 1787, from which it is taken by McMaster and Stone 150–57.

3.5.1 The arguments of the Honorable Mr. Wilson, expressed in the speech he made at the state-house on the Saturday preceding the general election (as stated in the Pennsylvania Herald,)[1] although extremely *ingenious* and the best that could be adduced in support of so bad a cause, are yet extremely *futile,* and will not stand the test of investigation.

3.5.2 In the first place, Mr. Wilson pretends to point out a leading discrimination between the State Constitutions, and the Constitution of the United States.—In the former, he says, every power which is not *reserved* is *given,* and in the latter, every power which is not *given* is *reserved:* And this may furnish an answer, he adds, to those who object, that a bill of rights has not been introduced in the proposed Federal Constitution.[2] If this doctrine is true, and since it is the only security that we are to have for our natural rights, it ought at least to have been clearly expressed in the plan of govern-

ment. The 2d. section of the present articles of confederation says: *Each State retains its sovereignty, freedom and independance*, AND EVERY POWER, JURISDICTION AND RIGHT WHICH IS NOT BY THIS CONFEDERATION EXPRESSLY DELEGATED TO THE UNITED STATES IN CONGRESS ASSEMBLED.—This declaration (for what purpose I know not) is entirely omitted in the proposed Constitution. And yet there is a material difference between this Constitution and the present confederation, for Congress in the latter are merely an executive body; it has no power to raise money, it has no *judicial jurisdiction*. In the other, on the contrary, the federal rulers are vested with each of the three essential powers of government—their laws are to be *paramount* to the laws of the different States, what then will there be to oppose to their encroachments? Should they ever pretend to tyrannize over the people, their *standing army*, will silence every popular effort, it will be theirs to explain the powers which have been granted to them; Mr. Wilson's distinction will be forgot, denied or explained away, and the liberty of the people will be no more.

3.5.3 It is said in the 2d. section of the 3d. article of the Federal Plan: "The judicial power shall extend to ALL CASES in *law* and *equity*, arising under this constitution." It is very clear that under this clause, the tribunal of the United States, may claim a right to the cognizance of all offences against the *general government*, and *libels* will not probably be excluded. Nay, those offences may be by them construed, or by law declared, *misprision of treason*, an offence which comes literally under their express jurisdiction.—Where is then the safety of our boasted liberty of the press? And in case of a *conflict of jurisdiction* between the courts of the United States, and those of the several Commonwealths, is it not easy to foresee which of the two will obtain the advantage?

3.5.4 Under the enormous power of the new confederation, which extends to the *individuals* as well as to the *States* of America, a thousand means may be devised to destroy effectually the liberty of the press—There is no knowing what corrupt and wicked judges may do in process of time, when they are not restrained by express laws. The case of *John Peter Zenger* of New-York, ought still to be present to our minds, to convince us how displeasing the liberty of the press is to men in high power[3]—At any rate, I lay it down as a general rule, that wherever the powers of a government extend to the lives, the persons, and properties of the subject, all their rights ought to be clearly and expressly defined—otherwise they have but a poor security for their liberties.

3.5.5 The second and most important objection to the federal plan, which Mr. Wilson pretends to be made *in a disingenuous form*, is the entire *abolition of the trial by jury in civil cases*.[4] It seems to me that Mr. Wilson's pretended answer, is much more *disingenuous* than the objection itself, which I maintain to be strictly founded in fact. He says "that the cases open to trial by jury differing in the different States, it was therefore impracticable to have

made a general rule." This answer is extremely futile, because a reference might easily have been made to the *common law of England*, which obtains through every State, and cases in the maritime and civil law courts would of course have been excepted. I must also directly contradict Mr. Wilson when he asserts that there is no trial by jury in the courts of chancery—It cannot be unknown to a man of his high professional learning, that whenever a difference arises about a matter of fact in the courts of equity in America or England, the fact is sent down to the courts of common law to be tried by a jury, and it is what the lawyers call a *feigned issue*.[5] This method will be impracticable under the proposed form of judicial jurisdiction for the United States.

3.5.6 But setting aside the equivocal answers of Mr. Wilson, I have it in my power to prove that under the proposed Federal Constitution, *the trial of facts in civil cases by a jury of the Vicinage* is entirely and effectually abolished, and will be absolutely impracticable. I wish the learned gentleman had explained to us what is meant by the *appellate* jurisdiction as to law and *fact* which is vested in the superior court of the United States?[6] As he has not thought proper to do it, I shall endeavour to explain it to my fellow citizens, regretting at the same time that it has not been done by a man whose abilities are so much superior to mine. The word *appeal*, if I understand it right, in its proper legal signification includes the *fact* as well as the *law*, and precludes every idea of a trial by jury—It is a word of *foreign growth*, and is only known in England and America in those courts which are governed by the civil or ecclesiastical law of the *Romans*. Those courts have always been considered in England as a grievance, and have all been established by the usurpations of the *ecclesiastical* over the *civil* power. It is well known that the courts of chancery in England were formerly entirely in the hands of *ecclesiastics*, who took advantage of the strict forms of the common law, to introduce a foreign mode of jurisprudence under the specious name of *Equity*. Pennsylvania, the freest of the American States has wisely rejected this establishment, and knows not even the name of a court of chancery—And in fact, there can not be any thing more absurd than a distinction between LAW and EQUITY. It might perhaps have suited those barbarous times when the law of England, like almost every other science, was perplexed with quibbles and *Aristotelian* distinctions, but it would be shameful to keep it up in these more enlightened days. At any rate, it seems to me that there is much more *equity* in a trial by jury, than in an appellate jurisdiction from the fact.

3.5.7 An *appeal* therefore is a thing unknown to the common law. Instead of an appeal from facts, it admits of a second, or even third trial by different juries, and mistakes in points of *law*, are rectified by superior courts in the form of a *writ of error*—and to a mere common lawyer, unskilled in the forms of the *civil law* courts, the words *appeal from law and fact*, are mere nonsense, and unintelligible absurdity.

But even supposing that the superior court of the United States had the authority to try facts by *juries of the vicinage*, it would be impossible for them to carry it into execution. It is well known that the supreme courts of the different states, at stated times in every year, go round the different counties of their respective states to try issues of fact, which is called *riding the circuits*. Now, how is it possible that the supreme continental court, which we will suppose to consist at most of five or six judges, can travel at least twice in every year, through the different counties of America, from New Hampshire to Kentuckey and from Kentuckey to Georgia, to try facts by juries of the vicinage. Common sense will not admit of such a supposition. I am therefore right in my assertion, that *trial by jury in civil cases, is, by the proposed constitution entirely done away, and effectually abolished.* 3.5.8

Let us now attend to the consequences of this enormous innovation, and daring encroachment, on the liberties of the citizens. Setting aside the oppression, injustice, and partiality that may take place in the trial of questions of property between man and man, we will attend to one single case, which is well worth our consideration. Let us remember that all cases arising under the new constitution, and all matters between *citizens of different states,* are to be submitted to the new jurisdiction. Suppose therefore, that the military officers of congress, by a wanton abuse of power, imprison the free citizens of America, suppose the excise or revenue officers (as we find in Clayton's Reports, page 44 Ward's case)[7]—that a constable, having a warrant to search for stolen goods, pulled down the clothes of a bed in which there was a woman, and searched under her shift,—suppose, I say, that they commit similar, or greater indignities, in such cases a trial by jury would be our safest resource, heavy damages would at once punish the offender, and deter others from committing the same: but what satisfaction can we expect from a lordly court of justice, always ready to protect the officers of government against the weak and helpless citizen, and who will perhaps sit at the distance of many hundred miles from the place where the outrage was committed?—What refuge shall we then have to shelter us from the iron hand of arbitrary power?—O! my fellow citizens, think of this while it is yet time, and never consent to part with the glorious privilege of trial by jury, but with your lives. 3.5.9

But Mr. Wilson has not stopped here—he has told us that a STANDING ARMY, that *great support of tyrants,* not only was not dangerous, but that it was *absolutely necessary.*[8]—O! my much respected fellow citizens! and are you then reduced to such a degree of insensibility, that assertions like these will not rouse your warmest resentment and indignation? Are we then, after the experience of past ages, and the result of the enquiries of the best and most celebrated patriots have taught us to dread a standing army above all earthly evils, are we then to go over all the thread-bare common place arguments that have been used without success by the advocates of tyranny, and which have been for a long time past so gloriously refuted! 3.5.10

Read the excellent *Burgh* in his political disquisitions, on this hackneyed subject, and then say, whether you think that a standing army is necessary in a free country? Even Mr. Hume, an *aristocratical* writer, has candidly confessed, that *an army is a mortal distemper in a government, of which it must at last inevitably perish* (2d Burgh 349)[9] and the Earl of Oxford (*Oxford* the friend of France, and the *pretender*, the attainted *Oxford*) said in the British parliament, in a speech on the mutiny bill; that "while he had breath, he would speak for the liberties of his country, and against courts martial and a standing army in peace as dangerous to the constitution," (*Ibid* page 455 [356]). Such were the speeches even of the enemies to liberty, when Britain had yet a right to be called free. But, says Mr. Wilson, "It is necessary to maintain the appearance of strength even in times of the most profound tranquillity." And what is this more than a thread-bare hackneyed argument, which has been answered over and over in different ages, and does not deserve even the smallest consideration?—Had we a standing army, when the British invaded our peaceful shores? Was it a standing army that gained the battles of Lexington, and Bunker's Hill, and took the ill fated Burgoyne? Is not a well regulated *militia* sufficient for every purpose of internal defence? And which of you, my fellow citizens, is afraid of any invasion from foreign powers, that our brave militia would not be able immediately to repel?

3.5.11 Mr. Wilson says that *he does not know of any nation in the world which has not found it necessary to maintain the appearance of strength in a season of the most profound tranquility;* if by this *equivocal* assertion, he has meant to say that there is no nation in the world without *a standing army in time of peace*, he has been mistaken. I need only adduce the example of Switzerland, which, like us, is a *republic*, whose *thirteen* cantons, like our thirteen States, are under a *federal government*, and which besides is surrounded by the most powerful nations in Europe, all jealous of its liberty and prosperity: And yet that nation has preserved its freedom for many ages, with the sole help of a militia, and has never been known to have a standing army, except when in actual war.—Why should we not follow so glorious an example, and are we less able to defend our liberty without an army, than that brave but small nation, which with its militia alone has hitherto defied all Europe?

3.5.12 It is said likewise, that *a standing army is not a new thing in America—Congress even at this moment have a standing army on foot.*—I answer, that *precedent* is not *principle*—Congress have no right to keep up a standing army in time of peace:—If they do, it is an infringement of the liberties of the people—*wrong* can never be justified by *wrong*—but it is well known that the assertion is groundless, the few troops that are on the banks of the Ohio, were sent for the express purpose of repelling the invasion of the savages, and protecting the inhabitants of the frontiers.—It is our misfortune that we are never at peace with those inhuman butchers of their species, and while

they remain in our neighbourhood, we are always, with respect to them, in a state of war—as soon as the danger is over, there is no doubt but Congress will disband their handful of soldiers:—it is therefore not true, that Congress keep up a standing army in a time of peace and profound security.

The objection to the enormous powers of the President and Senate is not the least important of all, but it requires a full discussion and ample investigation—I shall take another opportunity of laying before the public my observations upon this subject, as well as upon every other part of the new constitution.[10] At present I shall only observe, that it is an established principle in America, which pervades every one of our State Constitutions, that *the legislative and executive powers ought to be kept forever separate and distinct from each other*, and yet in this new constitution we find there are TWO EXECUTIVE BRANCHES, each of which has *more or less controul over the proceedings of the legislature*. This is an innovation of the most dangerous kind upon every known principle of government, and it will be easy for me to convince my fellow citizens that it will, in the first place, create a *Venetian* aristocracy, and, in the end, produce an *absolute monarchy*. 3.5.13

Thus I have endeavoured to answer to the best of my abilities, the principal arguments of Mr. Wilson—I have written this in haste, in a short interval of leisure from my usual avocations. I have only traced the outlines of the subject, and I hope some abler hand will second my honest endeavours.

A Democratic Federalist.

1. This is Wilson's widely discussed "Address to the Citizens of Philadelphia" of 6 October 1787, McMaster and Stone 143–49. The pamphlet version is reprinted (less accurately) in Ford, *Pamphlets* 155–61. For further information on this speech see Centinel II, 2.7.35 n. 14.

2. McMaster and Stone 143–44. See above, Federal Farmer IV, 2.8.50 n. 39; below, [New Hampshire] Farmer 4.17.2 nn. 1, 2.

3. See Livingston Rutherford, *John Peter Zenger, His Press, His Trial, and a Bibliography of Zenger Imprints; also A Reprint of the First Edition of the Trial* (New York 1904).

4. McMaster and Stone 144–45.

5. Cf. *The Federalist* no. 83, 565.

6. Many Anti-Federalists objected that the appellate jurisdiction given to the Supreme Court would enable that Court to review the decisions of juries in matters of fact, thus reducing the trial by jury to a mere form. See Martin 2.4.92–93; Centinel II, 2.7.41; Federal Farmer XV, 2.8.189; Brutus XIV, 2.9.170; Pennsylvania Convention Minority 3.11.38–39; Symmes 4.5.2 (13); Impartial Examiner 5.14.9; Cincinnatus I, 6.1.7. Noah Webster suggested that appeals of questions of fact would be decided by a second jury (Ford, *Pamphlets* 53); and the Anti-Federalist [New Hampshire] Farmer proposed a jury to sit with the federal Supreme Court (4.17.3). The intention of the framers seems, however, to have been to provide for the customary appellate review of the facts by courts of equity and admiralty and maritime jurisdiction. There was unquestionably some basis for Anti-Federalist concern. The objections were laid to rest in the 7th Amendment, providing not only that civil suits should be tried by jury but also that no fact decided by a jury should be reexamined by any court of the United States except according to the rules of the common law. The matter is dis-

cussed by Joseph Story, *Commentaries on the Constitution of the United States* 2d ed., II, sec. 1762–72, which also includes the pertinent passages from *The Federalist* nos. 81, 83, and from the leading Supreme Court case, *Parsons* v. *Bedford*, 3 Peters 413, 446 (1830). See also James Wilson's explanation, Elliot II, 493–94, 518.

7. John Clayton, *Reports of and Pleas of Assises at Yorke: 1631–1650* (London 1651).

8. McMaster and Stone 145–46.

9. James Burgh, *Political Disquisitions* (London 1774–75) II, bk. 3, ch. 1, p. 349.

10. No further essays appear to have been published, but see below, Cincinnatus IV and V, 6.1.25–43.

A Review of the Constitution Proposed by the Late Convention by A Federal Republican

1787

The initials at the end of this essay, "V.P.," seem to stand for Veritas Politica, the pseudonymous author of a short piece published in the *Pennsylvania Herald* on 27 October, which is in its main parts substantially identical with parts of the pamphlet of A Federal Republican.[1] The pamphlet, which is reprinted here, is dated 28 October, the day after the publication of the short newspaper essay, and is therefore presumably an extension and elaboration of the author's preliminary observations. The original essay is improved and extended to such an extent, however, that it would not be surprising if a second writer had somehow been involved in the pamphlet. An outline of this modest Anti-Federalist piece follows.

I. Introduction (3.6.1–9).
   Articles of Confederation are defective and need remedy; framers are good and wise men, but they can err and be affected by interest; published defences of Constitution are inadequate.
II. Legislature (3.6.10–22).
   A. Organization.
      1. Division of legislature is sound because of importance of preventing bad laws (3.6.10).
      2. Representation of the states.
         a. Representation is too small (3.6.11).
         b. More important, the states are unequally represented, contrary to the basic principles of confederation (3.6.12–14).
      3. The power of Congress over the times, places, and manner of choosing legislators is dangerous (3.6.15–16).
   B. Powers of legislature are excessive.
      1. Unlimited character of general welfare/taxing clause (3.6.17–19).

2. Standing army—extreme danger, especially to manners and virtue of people (3.6.20–21). (Important discussion of connection between virtue and maintenance of freedom.)
3. Power to prohibit importation of slaves leaves slavery intact (3.6.22).

III. Judicial powers are too comprehensive, too mixed with other departments (3.6.23).

IV. The proposed Constitution will tend to reduce the dignity and importance of states (3.6.25–38).
The guarantee of a republican form of government is empty (3.6.25).
Representation is inadequate (3.6.26).
State judicial power will sink to nothing (3.6.29).
States are deprived of necessary ways and means (3.6.30).
Powers of federal government are not in fact confined to general purposes (3.6.31–35).
No provision for freedom of press, which Congress may abridge (3.6.36).
State participation in elections is not enough to maintain states (3.6.37–38).

V. The executive is "too pointedly supreme"; there should be a sovereign executive council instead of a single executive magistrate (3.6.39–42).

VI. Mode of laying taxes (3.6.43–45). Taxes should be distributed by extent (or value) of land rather than by number of inhabitants (a major argument).

VII. Lack of a Bill of Rights (3.6.46–51). At least there should be a declared reservation of power in states.

VIII. Conclusion (3.6.52–56). Constitution conceived in wisdom but at present wears face of tyranny and should be reconsidered.

1. *A Review of the Constitution Proposed by the Late Convention Held at Philadelphia, 1787. By A Federal Republican.* Printed in Philadelphia, 1787, by Robert Smith and James Prange, "below the Drawbridge the third door below Spruce-Street, in Front and Water-Street."

Sed omnes omnium Charitates Patria una complexa est.
Cic. offic.[1]

Yet not the ties that kindred bosoms bind,
Not all in friendship's holy wreathes entwin'd
Are half so dear, so potent to controul
The gen'rous workings of the Patriot's soul.[2]

To the Freemen of the United States, the following critical remarks upon the

Constitution recommended by the late federal Convention, are most humbly inscribed

by their very obedient
humble servant,
the Author.

Philadelphia, Oct. 28, 1787[3]

Friends and Fellow-Countrymen:

When any nation is about to make a change in its political character, it highly behoves it to summon the experience of ages that have past, to collect the wisdom of the present day, and ascertain clearly those just principles of equal government, that are adapted to secure inviolably the lives, the liberties, and the property of the people. In such a situation are these United States at the present moment.—They are now called to announce the *Alpha* or the *Omega* of their political existence, to lay a deep foundation for their national character, and to leave a legacy of happiness or misery to their children's children.—The Constitution recommended to the consideration of the United States, is a subject of general discussion; and, while it involves in its fate the interest of so extensive a country, every sentiment that can be offered upon it, deserves its proportion of the public attention.—It is worth our while, before we make any observations on the Constitution, as it stands recommended, to recur to the motives which gave rise to the calling of a Convention. We were taught by sad experience, the defect of the present articles of confederation, and wisely determined to alter and amend them. 3.6.1

At the framing of the present confederation, the bond of union among the States, which arose from a community of danger, in some measure superseded the necessity of wisdom. A common interest excited us to unite our exertions for the public good. 3.6.2

At such a time a system of government conceived in perfect wisdom, and adopted with deliberation, was not expected; and as soon as those common principles which supplied its defects, ceased to operate, the inconveniences which arose from them, were very sensibly felt. Since that time the seeds of civil dissention have been gradually ripening, and political confusion hath pervaded the States. Commerce hath been declining, our credit suffering, and our respectability, as a nation, hath almost vanished. In such circumstances it was thought proper to collect the patriotic wisdom of the States for the purpose of amending the articles of confederation, which were found to be inadequate to the security of national prosperity and happiness; and of making such additions to supreme power, as our situation testified, were wanted. Necessity, therefore, gave birth to the Convention, and the glaring defects of the late system of confederation, were the objects of its amend- 3.6.3

ment. But was it a total subversion of the confederation, that was intended by Congress or expected by the people? Any one, tolerably acquainted with human nature, can easily discern, that people involved in difficulty, would embrace any change, even if it were evidently and designedly for the worse. But this circumstance ought not to preclude examination. Did we experience any disadvantage from every part of the present confederation? And why alter that which experience itself hath taught us to be good? Was it not expected that some necessary additions to the powers of Congress, together with a few alterations of a smaller nature would constitute the whole of their business? To frame a Constitution entirely new therefore was out of their province. This is not offered as an argument against the Constitution itself, but it would certainly have been wisdom to have reserved that which was known to be good, and to have amended that only which was found defective from experience. But notwithstanding that, if the proposed constitution can be made to appear to be excellent in itself, and properly adapted to secure inviolably the rights and privileges of the peoples; it is the part of every honest man to wish its establishment.

But that upon examination it will be found to be otherwise, I am fully persuaded.

3.6.4 We shall proceed to offer some sentiments on the Constitution proposed for the acceptance of the United States. In doing this, we shall endeavour to state most of the objections which have been made, and collect their force into one point of view.

3.6.5 It may be proper to take notice of an opinion that has been offered to the public. It is said by some, that after having delegated the best and wisest men in our country for the purpose of framing a Constitution for the United States, it would be only presumption to offer any objections to it.[4] This doctrine holds up to view an excess of humility. Any errors which we may imagine to exist in the Constitution, we are to resolve into our own incapacity to fathom them. It is true that we ought to rely much upon the wisdom of those patriots who composed the late Convention; but surely the people for whom they acted have an undoubted right to offer such objections as they may suppose to exist, and that for the purpose of having them accurately solved by more enlightened understandings. It is the part of the doubtful to enquire, and of the wise to answer and instruct. It is from this principle, and this only, that I now offer my thoughts on the subject. Besides the nature and importance of the thing shew the propriety of impartial discussion.

3.6.6 If it be true also, that no public deliberative assembly, however wise, is perfectly uninfluenced by secular interest; but that all are in some degree subject to those temporary relapses from prudence, which passion occasions, we may very naturally suppose that some parts of this Constitution are tinctured with correspondent partiality and weakness. Nature is seldom

over-awed by wisdom, and she often times draws her own picture in opposition to the constraint of education. We may without derogating from the characters of the members of Convention, expect to find defects in the Constitution which they have framed; and if the scrutiny of the public eye, viewing it in an infinite variety of lights can discern them, the motives must be dishonorable that prevent the communication of them.

3.6.7 On this subject much hath been published. Most of those pieces, however, which are said to be in favour of the Constitution, are only panegyrics, on those parts which are good, and to which no objections have been made. Mr. Wilson's speech does not come under this description.[5] It was composed in a masterly manner with strength and judgment. In it he has endeavoured to obviate some objections that have been offered to the public. It may be that the force of his arguments is not fully felt: but I think it will appear to any one whose understanding is not immoderately refined, that the writer who stiles himself the Democratic Federalist, is more than equal to him.[6] The Centinel has ably proposed many objections which have not been yet satisfactorily refuted.[7] Probably some of them exist beyond contradiction. The author of a pamphlet, stiled, Remarks on the Address of the Sixteen Members of the Assembly of Pennsylvania, has indeed touched upon many objections, and then *dismissed them*.[8] His whole performance is coloured with the ridiculous. He is no doubt a friend to Shaftsbury's position, and feels that it is easier to *laugh* than to *reason*. There is another pamphlet written by a citizen of America in favour of the Constitution.[9] The author of this deserves much for his style and plausibility of expression. He has made many excellent and wise remarks upon the Constitution. He has *instituted* a comparison between it and that of Rome and England. He points out several defects in the system of policy amongst the old Romans and modern Britons, and shews with some judgment the superior excellence of the proposed Constitution in its correspondent parts. But this is by no means proving that there are no errors in it. Some objections he has indeed *partially* considered, but the chief of the piece, which is good in itself, consists in encomiums on those parts which are unexceptionable. His mode of comparison is not just. Wealth and extent of territory have an immediate relation to government. The manners and customs of the people are closely connected with their government. Experience testifies that the manners and habits of the people in their several graduations to refinement have ever controuled their policy.

3.6.8 The excellent Montesquieu himself observes, that "the manners and customs of the people have an intimate connection with their laws."[10] In a comparison therefore, all these things ought to be considered. The same system of policy that might have been excellent in the governments of antiquity, would not probably do at the present day. The question which should be agitated is not whether the proposed constitution be better or

worse than those that have from time to time existed; but whether it be in every respect adapted to secure our liberty and happiness at the *present stage* of the world.

3.6.9 There is one circumstance in the sitting of the late Convention, which bears upon its face the colour of suspicion. It adds one to the many examples of the truth of the common adage (which is founded in a propensity of human nature) that all who have power are fond of exerting it. They had power to controul the manner of their convening, and they did it indeed in a very suspicious way. They excluded themselves as it were from the view of the public, and an injunction of secrecy was imposed on the members. This might have been done to blunt the natural jealousy of the people; but it was depriving them of a guard to their liberties, which they should ever possess. Whatever were the[ir] intentions in shutting out their proceedings from the public ear, it carried in it a suspicious appearance.

But this is a matter small in itself, and for the honor and respect which we profess to entertain for the members of Convention, we are bound to believe that their motives in this particular were honorable, decent and wise.

3.6.10 In reviewing the proposed Constitution, the first thing that strikes us is the division of the legislative authority into two branches. I think that after mature deliberation, this will be acknowledged to be prudent and wise. Yet what some writers have observed upon it is not perfectly true. They have deduced their advantages from improper positions. In the division of the legislative power, [few?] bad bills will probably be passed, but more good ones will be opposed. In forming a just *nexus imperii*, this ought always to take place. It is better that many good bills should be destroyed than that a single bad one should be permitted to pass. Were it not for this circumstance, there would be little advantage. For although the passion of the one might sometimes be controuled by the coolness of the other; yet the passion of the latter might sometimes counteract the wisdom of the former. Experience however shows it to be wise to divide the legislative power between two distinct bodies.

3.6.11 The next thing that presents itself to view, is the representation of the states.

In the second section of the first article it is said, that representations and direct taxes shall be apportioned among the several states, which may be included in this union according to their *respective numbers*, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the *United States;* and within every subsequent term of ten years in such a manner as they shall by law direct. The number of representatives shall not exceed *one* for every *thirty thousand;* but each state shall have at least one representative; and until such enumeration shall be made, the state of New-Hampshire shall be

entitled to chuse *three*, Massachusetts *eight*, Rhode-Island and Providence Plantations *one*, Connecticut *five*, New-York *six*, New-Jersey *four*, Pennsylvania *eight*, Delaware *one*, Maryland *six*, Virginia *ten*, North-Carolina *five*, South-Carolina *five*, and Georgia *three*. Here it is evident the representation is too scanty. There is a certain corrective balance to be preserved, not only between different houses, but also between the members that compose the same house. This is often times of very great use. It tends to keep alive a spirit of more accurate discussion. But with such a *paucity* of members, this advantage can never be experienced. Besides what thirty thousand men would be willing to have *one* man represent them. It borders indeed upon injustice. Among thirty thousand people there must of necessity be a variety of classes, each having distinct and separate concerns, to which some respect would most certainly be due. Among such a number of men there will naturally be so many different ratios of interest to which their feelings are alive, and with which their happiness is intimately connected, that they should by all means be regarded. It would indeed be frivolous to attend to the most minute circumstantial divisions of interest; but in such a number as thirty thousands there must be *divisions* of a larger and more important nature, which are entitled to respect.[11]

But in the clause before-mentioned, there is a more material error; an 3.6.12
error which essentially affects the rights of some states. It is the inequality of representation in the lower house. This particular has not yet been agitated.

In forming a *confederation* of *independent* republican states, it hath always been esteemed a fundamental law, that each state should have an equal representation. In forming the present confederation of the United States, this point was warmly urged by several learned gentlemen, and carried in Congress. Here is a change of which the citizens of the United States, who are less governed by principles of private interest, than those of true and impartial justice[,] should beware. The articles of the present confederation in this particular, are much more near akin to justice. They are not so highly coloured with *lawful oppression*. In the fifth article it is said, that, "in determining questions of the United-States in Congress assembled, *each state shall have one vote*." This is founded in reason, and its propriety is evinced by experience, from both of which it is very easy to prove, that representation among separate independent states should be equal. What is oftentimes observed upon this subject has very little meaning or force.

What, shall one state that is wealthier than another, that exceeds it in 3.6.13
extent of territory, and has a far greater interest in national decisions, have no more weight in them? Shall (for instance) the state of Delaware or Rhode-Island have an equal voice with that of Virginia or Massachusetts? Here is an apparent, though a very superficial difficulty. The superior weight of large states does not, and ought not to consist in a greater number of representatives. There is an unavoidable influence arising from circum-

stances, which of itself forms the superiority. It is evident that a larger and richer state must of necessity have its influence over a smaller in a due proportion. But the establishing of a superiority by law in the inequality of representatives among the states, is a kind of a constitutional reduction to slavery. Its superior influence exists in nature, and therefore it is unnecessary, and indeed abusive to establish it by law. The representation of *separate independent* states is exactly similar to the votes of individuals. Rich citizens, who have large and valuable possessions are much more affected by public decisions than those of little or no fortune. Yet is a rich citizen entitled to a greater number of votes than one who is poor? No, because in the very nature of things he is known to influence many poor men. Influence will generally be in proportion to abilities and wealth. The same principle may be applied to states with equal propriety. The larger and wealthier have a necessary and unavoidable influence over the smaller and less wealthy. Examples to verify this assertion are numerous, and among the number there is one the more striking from its bearing so great a resemblance to the American states.

3.6.14 The United Netherlands, or States of Holland, form a glaring example. Every state in the union has an equal voice, and yet is it not evident that Holland is as superior in influence as she is in wealth and extent? This arises from the nature of the thing. Although an equal voice is decreed by the constitution to each state, yet that of Holland has swallowed up the wealth, the power, and even the name.[12] Many more instances might be adduced, but the general system of things teaches us the propriety of admitting each state to an equal representation. It is said, however, that the small states will eagerly adopt the constitution proposed by the Convention. This I am inclined to doubt, but taking it for granted we can easily account for it. Their present situation is so bad, and their importance so inconsiderable, that of two evils they would willingly chuse that which is apparently the least. But let them have *time* to discuss and consider the matter, and recollect the probable perpetuity of it, and they will not so hastily embrace it. There are many reasons why small states would rather adopt this constitution, than run the risque of having none at all. In the former case, their importance would at least be nominal, in the latter it would dwindle away to nothing. It may be urged that the danger arising from the inequality of representation in the lower house, is sufficiently guarded against by the equality in the senate. Be that as it may, the thing is essentially wrong in itself. There is a mutual dependence between the two houses, and each has its proportion of influence. No circumstance can alter the intrinsic injustice of the thing. The more such inequality takes place, the more direct is the avenue to tyranny.

The other grand defect in the foregoing clause, we shall defer for the present, and treat it in the sequel.

3.6.15 In the third section of the first article it is said, that "the senate of the

United States shall be composed of two senators from each state, chosen by the *legislature* thereof for *six* years."

Then follows a mode of division amongst them into three classes, of which the first is to resign its place at the expiration of the second year, the second the fourth year, and the third the sixth year. This may in itself be an excellent thing, and well adapted to preserve a proper degree of experiental wisdom in the senate at all times. That class which retains its seat for six years, will in many respects have a superiority.

This being the case, the manner of determining the classes should have been stated; otherwise the jealousy of the states may rouse the animosity of party division to such a pitch as to endanger the springs of government. If a proper mode of dividing were pointed out, the division itself might be of great use.

The fourth section of the first article says, that "the times, places and manner of holding elections for senators and representatives shall be prescribed in each state by the legislature thereof; but the Congress *may* at any time *make* or alter such regulations except as to the *place* of chusing *senators*."* Here the mode of expression seems to be designedly ambiguous. It carries in it, however, a controuling power to be vested in Congress over the states in those matters that do not at all concern the nation at large. The power is limited—"except as to the place of chusing *senators*"—This I suppose was excepted because the senators are to be chosen by the *legislature* of each state. Indeed it would be an odd affair to have the legislatures of the several states collected together for the purpose of chusing senators in any place that Congress should appoint. But why is not the same provision made in the case of representatives? They are to be chosen by the people at large in each state—but is it an easier matter to draw the body of the people in any state into one place than their legislative body only? There may be some hidden propriety in this distinction, which it requires political vision very much refined to discern. I could wish to see it clearly pointed out. This refers, however, only to place—but what is meant by the manner of holding elections? If we are to understand by it the *mode of electing*, to give Congress power to controul it, is infringing upon one of those privileges upon which freedom itself is suspended. The manner of electing is clearly pointed out by the excellent *Montesquieu*, and he considers it as a fundamental law in every republican state.[14] While the people of the several states, who are

3.6.16

*To give a circumstantial proof of the absurdity of this, we shall mention a [scene] that lately took place. A gentleman who was in company with a member [of] convention, with whom he was acquainted, and who had signed the constitution, was mentioning some of the most common objections to it. Among others was this: the member of convention replied, That there was no such [clause] in it. Did this arise from his ignorance or a consciousness that it was [unjust] and absurd? Justitia sese non condemnat.[13]

alone concerned in it, have the free exercise of their will, they will adhere to this law; but to oblige them to resign it to a power whom it very little interests, is almost to oblige them to sell their birth right. A writer upon this subject, who signs himself an *American Citizen*, considers this matter very strangely; he supposes it to be a guard against the possibility of obstinacy in any state—as in the case of Rhode-Island.[15] This then is designed for a political antidote, in case of refusal in any one state to elect at all. But this is a very absurd supposition—for it is very evident that where there is no election, there can be neither *time, place* nor *manner* of holding it. The clause in the constitution takes for granted some election, but his construction supposes none at all.

3.6.17 The eighth section of the first article appears upon consideration to be big with unnecessary danger.

It seems to reduce humanity to too great a test. It bloats Congress with too much power, and leaves them without a guard to prevent the eruptions of human depravity. The very first clause contains every species of power that they could possibly be vested with. In it power is given them "to *lay* and *collect* taxes, duties, imposts and excises, to pay debts, and to provide for the common defence and *general welfare* of the United States; but all duties, imposts and excises shall be uniform throughout the United States." This power may, if exerted in its extent, reduce the several states to poverty and nothing. We would willingly pay a compliment to human nature by supposing the best, if experience did not rise up against us. The wisdom of many nations hath induced them to enlarge voluntarily the powers of their rulers: but we have no instances of such self-denial in governors as hath led them to restrain their own power and abridge their own authority. It was wisdom in this country to appoint a convention for the purpose of enlarging the powers of Congress; but it will be superior wisdom to give them no more power than is sufficient. Our situation taught us the necessity of enlarging the powers of Congress for certain national purposes, where the deficiency was experienced. Had these and these only been added, experience itself would have been an advocate for the measure. But in the proposed constitution there is an extent of power in Congress, of which I fear neither theory nor practice will evince the propriety or advantage. The power of internal taxation given to Congress in the foregoing clause, is a very unjust and improper one. It has been hinted in some publication, that impost will defray all our national expences.[16] This is a proposition perfectly absurd. Will not the support of a standing army, a navy, etc. be a prodigious addition to national expence? To say that this government will not be an additional expence to the country, is an assertion to which common sense would never assent. Let it be remembered, that this constitution, if adopted, will create a vast number of expensive offices. Most of them will be of the national character, and must be supported with a superior degree of dignity and credit; without regarding the enormous expence which Congress may incur

if *they please*. The many places that will and must be created and paid for, will add much to the burden of our debts. In the legislative, executive, and particularly the *judiciary* department, there will be a multiplicity of officers hitherto unknown, and the salaries annexed to them must be very considerable. Besides, if the states are [to] retain even a *shadow* of sovreignty, the expence thence arising must also be defrayed. This combination will cause a greater demand than can easily be answered. The gentleman who remarks upon the address of the sixteen members, answers this objection with uncommon sagacity. "The first objection is, (says he) that the government proposed will be too expensive. I answer that, if the appointment of offices *are* not more, and the compensation or emoluments of office *not* greater than *is* necessary, the expence will be by no means burdensome, and this must be left to the prudence of Congress: for I know no way *to controul* supreme power *from* extravagancies in this respect."[17]

3.6.18 What does all this amount to, but an oblique confession, that Congress may, if they please, load us with many needless expences?

The taxation of the particular states for their own support will be overruled by Congress, or else it will be obliged to embrace a measure perhaps the most odius in the world, viz. excessive taxation. This would be widely different from the opinion of the ablest politicians. I am persuaded that if this constitution were to be adopted, Congress would be reduced to this alternative, either to oppress the people in the manner just hinted, or commit upon them a violent injury by depriving them of their rights.

3.6.19 Congress will be the judges of what is necessary for the *general welfare* of the United States, and this will open the door to any extravagant expence which they shall be pleased to incur. For this reason their power should have been accurately defined. Baron Montesquieu (B. 13, C.I) observes that "the real wants of the people ought never to give way to the imaginary wants of the state. Imaginary wants are those which flow from passion, and from the weakness of the governors, from the charms of an extraordinary project, from a distempered desire of vain glory, and from a certain impotency of mind that renders it incapable of withstanding the attacks of fancy. Often times has it happened, that ministers of restless dispositions have imagined that the wants of the state were those of their own little and ignoble souls." That this may happen here, we have a right, and indeed ought to suppose. Any man who carefully attends to that part of the constitution quoted above, must judge that the powers granted by it, are too indefinite. Indeed as it stands there expressed, it includes every other power afterwards mentioned.

3.6.20 We come now to speak of a standing army. By this constitution, the Congress have power to "declare war," as also to "raise and support armies; but no appropriation of money for that purpose shall be for a longer term than two years." We are to suppose that Congress is a representation of the people of the United States at large, if so, the *nexus imperii* even of

the English constitution is lost. There the king has only the power of declaring war, and the house of parliament, that of raising money for the support of it. So that it seems to be wrong to give Congress this combined power independent of a check from a majority of the state legislatures. "No appropriation of money for this purpose shall be for a longer term than two years." This is not very moderate. The space of time is only as *long again* as that permitted in England, for the same purpose.

3.6.21 But a standing army in time of peace is strongly to be objected to. It always hath been and always will be the grand machine made use of to subvert the liberties of free states. *Pisistratus and Caesar* are not forgotten. It ought to be laid down as a principle that free states should never keep a standing army for the support of its laws. "They ought (as *Brutus* says) to depend for their support upon the citizens. And when a government is to receive its support from the aid of the citizens, it ought to be so constructed as to have the confidence, respect and affection of the people. Men who upon the call of the magistrate, offer themselves to execute the laws, are influenced to do it from affection for the government or from fear; when a *standing army* is at hand to punish offenders, every man is actuated by the latter principle, and therefore, when the magistrate calls, will obey." Fear however is a contracting principle of obedience. "But when this is not the case, the government must rest for its support upon the confidence and respect which the people have for their government and laws."[18] If therefore the government of the United States be just and equal, and the states are to retain their seperate powers, a standing army is useless and dangerous. It will inevitably sow the seeds of corruption and depravity of manners. Indolence will increase, and with it crimes cannot but increase. The springs of honesty will gradually grow lax, and chaste and severe manners be succeeded by those that are dissolute and vicious. Where a standing army is kept up, virtue never thrives. In this particular experience will abundantly testify what the nature of the thing would suggest. Whatever the refinement of modern politics may inculcate, it still is certain that some degree of virtue must exist, or freedom cannot live. Unless Mandervill's position be embraced, "that private vices are public benefits":[19] a standing army will work the destruction of these states. Virtue and simplicity of manners in an extensive country by their innate energy and vigour, create a healthy constitution, and command prosperity to accompany it; but *vice* like a sickly air, debilitates the nerves of the political body, and withers all its bloom. A standing army will increase *vice*, and that a disunion of interest and affections. It is this that weakens the force, and destroys the harmony of free states. These evils in process of time will be derived from a standing army, and when we shall have outlived our *virtue*, every effort to recover it, will be vain and abortive. The propriety and advantage of a standing army can be but poorly vindicated.

My fellow citizens, beware of such pretences, and while this tyrannical

monster of depravity exists in the plan, do not adopt it, unless you are willing to entail upon your children the miseries of vice, and leave to posterity the corrupted relics of a shattered government.

3.6.22 The next thing which we proceed to, is the importation of slaves, contained in the ninth section of the first article. It says, that "the migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by Congress prior to the year 1808, but a tax or duty may be imposed upon such importation, not exceeding ten dollars for each person." ["]The truth is, (says a citizen of America) Congress cannot prohibit the importation of slaves during that period; but the laws against the importation of them into any particular state stand unrepealed. An immediate abolition of slavery would be ruin upon the whites and misery upon the blacks in the southern states. The constitution therefore hath wisely left each state to pursue its own measures with respect to this article of legislation during the period of twenty one years."[20] That the importation of slaves shall not be forbidden till that time may be very wise—but what hath that to do with the abolition of slavery? To prohibit the importation of slaves is not to abolish slavery. For all that is contained in this constitution, this country may remain degraded by this impious custom till the end of time.

3.6.23 The next thing that strikes our attention in a review of the constitution, is the disposition of the judicial powers. The first section of the third article says; that "the judicial powers of the United States shall be vested in one supreme court, and in such inferior courts as Congress *shall* from time to time establish. The judges both of the supreme and inferior courts shall hold their offices during good behaviour, and shall at stated times receive for their services a compensation which shall not be diminished during their continuance in office." This is certainly too indefinitely comprehensive. What *inferior courts* Congress shall be pleased to establish, is not known, nor can be imagined Montesquieu is of opinion, that where the judicial power is not kept perfectly distinct from the legislative and executive, liberty is endangered.[21] The *Centinel* quotes a clause from Blackstone, much to the purpose,[22] which says, "that if the power of judging were entirely trusted with the magistrates, or any select body of men, *named by executive authority*, the[ir] decisions in spite of their own natural integrity would have a bias towards those of their own rank and dignity; for it is not to be expected, that the *few* will be attentive to the rights of the *many*.

3.6.24 ["]This therefore preserves in the hands of the people, that power which they ought to have in the administration of justice, and prevents the encroachments of the most powerful and wealthy citizens." If this be true, what may not the judiciary come to under this constitution? It may gradually grow corrupted, till the very power of judging become the readiest tool in the work of tyranny. *Drowsy* justice may e'er long sit *nodding* on her rotten bench, and a *collective despot* smile upon the *harpies* of ravenous *ambition*.

Such a despot must indeed have many friends, whose injustice in their way to glory, would readily be connived at.

3.6.25 It is worth our while to enquire how far the proposed constitution will tend to reduce the dignity and importance of the states. The several states are by this constitution, to have a republican government guaranteed to them; but where is the use of such a position, when the powers granted to Congress must inevitably make it void? That the republican form here decreed to each state will indeed be only *form*, human nature as well as experience will evince. Let us attend to the three first articles in the constitution of Poland. 1. "The crown of Poland shall be forever elective, and all order of succession provided; any person who shall endeavour to break this law, shall be declared an enemy to his country, and liable to be punished accordingly. 2. Foreign candidates to the throne, being the frequent cause of troubles and divisions shall be excluded; and it shall be enacted, that for the future, no person can be chosen king of Poland, and great duke of Lithuania, excepting a native Pole, of *noble* origin, and possessing land within the kingdom. A son or grandson of a king of Poland, cannot be elected immediately after the death of their father or grandfather; and are not eligible excepting after an interval of two reigns. 3. The government of Poland shall be forever *free, independent*, and of a *republican form*."[23] What frenzy to talk of freedom and independence after the two first articles. The height and extent of this freedom and *independence*, experience has shown and will show.

3.6.26 After a candid examination into the disposition of the legislative, executive and judicial authority of the United States, it will appear that the several states will have very little or no seperate internal policy, but will be all pressed into one compact system of government, of which they will only be parts. The want of responsibility to the people among the representatives in this constitution, would furnish matter for ample discussion, but we pass over it in silence, only observing that it is a grand and indeed a *daring* fault, and one that sanctions with security the most tyrannic edicts of a despotic voice. Here, my fellow citizens, is a wide avenue to corruption, of which time will evince the danger. "Which circumstance taking place, every species of venality must spread through the land with rapid progress. The contagion will not be confined to the higher classes; it will extend its baneful influence over all ranks and degrees of men.

3.6.27 ["]Thenceforward the security of property will be unhinged, and our most valuable rights will be held upon a precarious tenure.

["]The judges of our property are named by the supreme, and his favour will be confined on those persons who lend their support perhaps to tyrannical measures.

["]Hence the contagion of venal[i]ty will pervade the seats of justice. It will be kept alive by gainful prospects; and every occasion of solicitation in favour of a son or a brother, or any relation or friend, will be a fresh

incitement to preserve the venal system in strength and vigor.

["]It will not escape notice, that the determination of our property in the *last resort*, will, by the power decreed to the supreme, by this constitution, be lodged with persons, whom, if corrupted, no dependence on the people will oblige to be just."[24]

3.6.28 The ministers of justice of all others should not be beyond the reach of the people.

The same thing is true of political as of other machines. The utility of them does not increase with the complication of their parts. But provided the effect be the same, the more simple the better.

The organization of this is evidently so complex that it will require much strength to put it in motion: and great care must be taken in the use of it, that the smaller parts be not broken to pieces.

3.6.29 But I fear that no care can prevent the extinction of independence among the several states. The judicial power proposed to be granted by this constitution, goes far to produce this effect. The powers of the supreme courts and of such inferior courts, as Congress shall *be pleased* to ordain, are exceedingly comprehensive. It comprises all civil cases, except those which arise between citizens of the same state. That the judicial power of each state will sink into nothing, will easily be seen. Suppose, for instance that Congress be pleased to ordain or establish one of these inferior federal courts in each state. The consequence will be that the others will be nullified. The courts are to be under the sanction of the *United States of America*, not of a particular state. They must be supported with dignity, and their judges and other necessary officers will have their salaries stated by *Congress* which will be paid out of the treasury of the *United States*. In this situation, we can easily foresee that in the common and unavoidable course of things, the courts established by subordinate power supported with less splendor and dignity, will at length dwindle into nothing.

3.6.30 Another circumstance should be attended to: The States will be exceedingly strained to support them.

Most of the *ways and means* as they are called are entirely shut out from the State governments.

3.6.31 The tenth section of the first article says, "No state shall, without the consent of Congress lay any imposts or duties on imports or exports, etc. etc. the net produce of all such imposts and duties laid by any state on imports or exports, shall be for the use of the treasury of the United States, and all *such laws* shall be subjected to the revision and *controul* of Congress." What then is to be the mode of raising money for defraying the expences of the state? It is reducing them to the necessity of laying direct taxes, which is egregiously abusive. Most of the states are already groaning under their taxes. Here the *very idea* of state is entirely done away. But on the other hand, the government of the *United States* has an enormous power of raising money in every way as well as that of contracting debts at *plea-*

sure. To give them the power of laying *taxes, duties, imposts* and *exise*, by way of providing for the *welfare* of the United States, and then constitute them judges of what is necessary for these purposes, is giving them power to satisfy at the expence of the states, any whim which ambition or the love of ostentation might suggest to them. But yet every law thus made will be binding; for they have an additional power expressly granted them, "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all the powers vested by this constitution in the government of the *United States*, or in any *department* or office thereof."

3.6.32 This may from the mode of expression be construed into a *tyrannical* grant to enforce *tyranny* itself. Have the states in this predicament any kind of consequence or power, or are they not rather reduced to inactive *parts* of the same *grand empire?* But the very last clause but one in the constitution proves clearly that the whole country is to be comprised into one large system of lordly government. A tight system indeed. They say that "this constitution and the laws of the *United States*, which shall be made in *pursuance thereof*, and all treaties made or which shall be made under the authority of the United States, shall be the supreme law of the land, and the judges in every state shall be bound by them or any thing in the constitution or laws of any state to the contrary notwithstanding." Here is at once created a fruitful source of contention and error. What end will there be to the confusion that will arise from the many laws or ordinances of Congress with respect to revenue, viz. *taxes, duties, imposts, etc. when those of the seperate states are to be controulled by them?* But what judges are to be bound by them in all cases whatever, notwithstanding any laws to the contrary, that may have been promulgated by any particular state? The judges not only of those inferior *federal* courts which Congress may from time to time establish in any or all the states; but also the judges of the courts immediately dependent on the states themselves. They are to be over-ruled by the *laws* of Congress in "every state," and the laws of every state must be prejudiced in *their* favor.

3.6.33 Can any state, or the citizens of any state think themselves secure when they are conscious that their own laws will not avail them in competition with *those* of Congress? Suppose Congress in making its provision for the *general welfare* of the *United States*, and framing those laws which shall be deemed necessary and *proper* for carrying into execution all their powers, should, in the complex body of them, oppose the general system of state policy, what must be the consequence? It must be laid prostrate in the dust, and yield to the ordinances of Congress, and that according to their own mode of construing them. If this does not open the door to violent oppression, it at least pours upon us a load of inconveniencies. I know it is said that all the powers of Congress must be exercised for the *general welfare*, and have for their object *general* concerns only. But what are these general

concerns? May they not without difficulty be construed to the prejudice of *particular concerns?*

3.6.34 Such a construction will certainly follow from the present indefinite mode of expression in this constitution. There is a writer upon the subject who attempts to explain the intentions of the convention in constituting the powers of Congress.[25] He says that, "the first object of the constitution is to *unite* the states into one *compact* society for the purpose of government. If such union must exist or the states be exposed to foreign invasion, internal discord, reciprocal encroachments on each other's property—to weakness and infamy, which no person will deny—what powers must be collected and lodged in the supreme head or legislature of these states? The answer is easy. The legislature must have exclusive jurisdiction in all matters where the states have a mutual interest. There are some regulations in which all the states are equally concerned—there are others which in their operations are limited to one state. The former belong to Congress, the latter to the respective legislatures. No one state has a right to supreme controul in any affair in which the other states have an interest; nor should Congress interfere in any affair which respects one state only. This is the general line of division which the convention have endeavoured to draw between the powers of Congress and the rights of individual states.["] The states in their seperate capacity cannot provide for their common defence, nay, in case of a civil war, one state cannot secure its existence. The only question therefore is, whether it is necessary to unite and provide for the general *welfare?*

3.6.35 For this question being once answered in the affirmative, leaves no room to doubt the propriety of constituting a power over the United States, adequate to these *general purposes*. This was spending time in vain, for it is known, and are invincibly acknowledged that the power of Congress should extend to every case where the interests of the United States are clearly found to be mutual. But pray cannot Congress, after having ascertained this union of interests, and constituted proper powers in all cases to which it applies, proceed one step farther and from an over-ruled system of government in the country, in this compact situation? Is there not a wide difference between just constituting powers adequate to general purposes, and proceeding regularly beyond it to the establishing of a supreme authority over the states in this collective view? The distinction is wide and apparent. Upon a candid examination it will be found that the combination of them both exists in the constitution.

3.6.36 It hath been said that the objection with respect to the freedom of the Press is not valid, because the power of controuling that is lodged with the several states.

A little consideration will show that this, though perhaps just in itself, is but a specious pretext. Congress have power to lay all duties of whatever kind, and although they could not *perhaps* directly bar the freedom of the Press, yet they can do it in the exercise of the powers that are expressly

decreed to them. Remember there are such things as *stamp duties* and that these will as effectually abolish the freedom of the press as any express declaration.

3.6.37 It is said however, that the legislatures of the several states will not dwindle away, because they have the sole right of electing the senate. This indeed is all, and such as it is, it will not last long. "Ladislaus of Poland, who was elected emperor after the temporary reign of Sigismund, having relinquished the right of imposing taxes, called an assembly of prelates, barons, and military gentlemen, in their respective provinces, in order to obtain an additional tribute. The *provincial assemblies* gave birth to the dietines; which now no *longer retain the power of raising money in their several districts, but only elect the nuncios or representatives for the diet.*"[26] And is it expected that when the *legislatures* of the states are reduced to mere *boards of electors*, they will long continue so? No, this last dreg of power will at length vanish. Nominal power is always a disgrace unsupported by reality.

3.6.38 That our boasted republic will ere long wear the face of an aristocracy may easily be seen. The foundation of the Venetian aristocracy is well known. "The city was divided into six districts, called festiers. The council of forty proposed that each of these partitions should name two electors, amounting to twelve in all, who should have the power of choosing from the whole city four hundred and twenty, who should have the whole power of the general assembly, and be called the grand council. The people were amused with fine promises and order of regularity, and consoled with *assertions* that their right of election still continued, and that those who should not be chosen one year, might be the next, and not perceiving that this law would be fatal to *their* power, suffered that aristocracy to be thus founded, which exists to this hour. The next proposal was that a committee of eleven should be appointed to name the doge. Though the design of reducing the people to nothing might have been easily seen in these manoeuvres, yet the people wearied, irritated, and discouraged by eternal discords, agreed to both."[27] Thus easy may be the gradation of these states.

3.6.39 The proposed constitution is evidently not calculated to coalesce with human nature in another respect. The executive, as vested in the president is too pointedly supreme. The fears of the people will and ought easily to be agitated by such an extent of power in a single man; particularly, if the situation of that man be such as will easily permit any gratification of partiality or ambition.

3.6.40 Suppose we ask the question, whether it would not be better to substitute in the room of a *single* executive magistrate, a *sovereign executive council*, consisting of one counsellor chosen from each state by the executive thereof, with a president of such council, who should be only *primus inter pares* to be chosen from among themselves by the joint ballot of the council and senate, or the former only?

This council to have the appointment of all officers under the federal government, instead of the senate and president, the former of which should have no executive or other powers whatever in that department; but should act merely in a legislative capacity, in conjunction with the house of representatives. There is another idea to be suggested, that in just policy no money bill should be altered or amended in any way by the senate. 3.6.41

But the correction of one part is precluded by an error in another; for here the inequality of representation in the lower house rises into view, and prevents our observing any thing further.

Upon the whole, it is evident that this constitution carries in its figure the strongest features of political ambition, beneath the charming delusion of a fair complexion.

It hath been made an objection to this constitution, that the legislative and executive are not kept perfectly distinct and seperate. 3.6.42

This, I think, is not valid. The executive should have a check on the legislative for this simple reason—that the executive hath its own limits—but the legislative independent of it, would have none at all.

To make laws is unconfined and indefinite, but to execute them when made, is limited by their existence.

But from the executive's having an undue influence over the legislative, I must confess, I have a great aversion.

*The division among the senators is unintelligible,

The next thing that we come to speak of, is the mode of laying taxes. All direct taxes are to be apportioned among the several states according to their respective numbers. 3.6.43

This is a great and a fundamental error. Direct taxes should always be apportioned according to extent of territory. In framing the present confederation in 1778, this was held to be an essential point. Article 8th says, "all charges of war and other expences which shall be incurred for the common defence and general welfare, and allowed for by the United States in Congress assembled, shall be defrayed out of the common treasury, which shall be supplied by the several states in proportion to the value of land in each state, etc." The value of land in a country increases with its riches, and therefore forms a just criterion. There are many reasons which might be offered to show that the number of inhabitants in any state is an improper measure of apportioning taxes. The inhabitants of some states may be numerous and poor, and those of another, few and wealthy.

The truth is, the ratios both of inhabitants and wealth, conspire to shew that the extent of territory is the only proper measure in apportioning taxes 3.6.44

*What was observed on the division of the senate in page 13 [3.6.15] refers only to the four first years after the establishment of this constitution, if it should ever be ratified. But whether they are not the most important, and whether what in consequence of it begins ill, will not continue so, ought to be considered.

among the several states. Commerce creates wealth, but at the same time luxury and high life, and these again a decrease of inhabitants.

3.6.45 The luxury that is derived from commercial wealth always tends to stop population. From this it clearly appears that the apportioning of taxes according to numbers is not just. On the contrary, the state of agriculture is more favourable to population, but not to wealth. Indeed land must, in the nature of things, afford a just measure. It is true that the value of land is dependent on circumstances. But the richer the country grows, the more valuable the land. The extent of land in Massachusetts is small in proportion to its inhabitants, but yet it is more valuable—in Virginia it is very great in proportion to the inhabitants, but yet it is not so valuable.

Let direct taxes be apportioned according to the value of land in each state, and it must be just for this reason, that the value of land always increases in an exact proportion to the riches of the country.

3.6.46 Hitherto we have been considering the blemishes of the constitution as they statedly exist—other objects are derived from omission. Among these the grand one, upon which is indeed suspended every other, is the omission of a bill of rights.

The remarker upon the address of the sixteen members has answered their objection with much force. "I answer (says he) *this is not true*, it contains a declaration of many rights, and very important ones, i.e. that people shall be obliged to fulfil their contracts, and not avoid them by *tenders* of any thing less than the value stipulated—that no *ex post facto* laws shall be made, etc."[28]

3.6.47 The gentleman has here very wittily mistaken the sense of the two terms right and obligation.

They are correlative terms, and between two parties, whenever the former applies to the one, the latter of necessity applies to the other. Whatever any one has a *right* to expect from me, I am *obliged* to render him. He might as well have said that the constitution gave the people a *right* to submit to Congress in every thing, and that we have a *right* to pay the last farthing of compliance to their despotic whims.

What he mentions is the enforcing of *obligation* and not the declaring of *right*.

3.6.48 One of the learned members of the late convention—the honorable Mr. Wilson observes in his speech, that all powers which are not by the constitution given up to Congress, are reserved for the disposition of the several states.[29] This observation is wise and true, because properly speaking it should be so. In entering into the social compact, all rights which are not expressly given up to the governors are reserved to the people. That it is so from a just construction it is easy to discover.

3.6.49 But notwithstanding, if the people are jealous of their rights, where will be the harm in declaring them? If they be meant as they certainly are to be reserved to the people, what injury can arise from a positive declaration of

it? Although in reasoning it would appear to be unnecessary, yet if the people prefer having their rights state[d]ly defined, it is certainly reasonable, that it should be done. I am well acquainted with the logical reason, that is general[ly] given for it.

It is said that the insertion of a bill of rights, would be an argument against the present liberty of the people. 3.6.50

To have the rights of the people declared to them, would imply, that they had previously given them up, or were not in possession of them.[30]

This indeed is a distinction of which the votaries of scholastic philosophy might be proud—but in the political world, where reason is not cultivated independently of action and experience, such futile distinctions ought not to be agitated.

In fact, it does not exist, for I should think, it is as rational to declare the right of the people to what they already possess, as to decree to them any new rights. If the people do really possess them, there can be no harm in expressing what is meant to be understood.

A bill of rights should either be inserted, or a declaration made, that whatever is not decreed to Congress, is reserved to the several states for their own disposal.

In this particular, the articles of the present confederation have an evident advantage. The second article says, that "each state retains its *sovereignty, freedom and independence*, and every *power, jurisdiction, and right, which is not* by this confederation *expressly declared* to United States in Congress assembled." 3.6.51

This will appear the more proper, if we consider that these *are rights* in which all the states are concerned. It is thought proper to delegate to Congress supreme power on all occasions where the *natural* [mutual?] interests of the states are concerned, and why not for the same reason grant and declare to the states a bill of *those rights* which are also *mutual?*

At any rate it is certain that no injury can arise from it, and to do it, would be satisfactory and wise.

On the whole, my fellow-citizens, this constitution was *conceived* in wisdom; the thanks of the United States are justly due to the members of the late convention. 3.6.52

But let their productions pass again through the furnace.

Do not give them even the opportunity of depriving you of your rights and privileges, and that without breaking over any restraint imposed by the constitution.

Because this once granted they will be fully enabled in the present age to lay the gentle foundation of despotic power, and after a temporary interval of seeming humanity between you and succeeding generations, to rivet upon *them* the chains of slavery beyond the possibility of a rupture.

To guard against this, I could wish to see the proposed constitution revised and corrected.

3.6.53 If the States are not to be *confederated,* let them be reduced to one compact body.

And if a perfect consolidation of the States is to take place, if the people are to become the source of power, and if Congress is to represent them as the head of this grand body politic, in the name of all that is dear to freemen, permit not the veins through which the life of government itself is to flow from the *heart* to the *head,* be any way obstructed—let the passages be free and open that *vital* heat may *animate* every *limb.*

That if all the States were to offer their objections, the constitution would be reduced to nothing, is an ill founded idea.

3.6.54 The good natured simularity which the citizen of America discovered between this constitution and a piece of painting, is perfectly erroneous.[31]

All painting is addressed to the *sense* and relished by *taste* which is various and fluctuating—but this constitution is addressed to the *understanding,* and judged of by *reason* which is fixed and true.

The constitution is for the most part good, and perhaps many of the objections which have been made to it arise from our not being able to discern *clearly* the collective interest of the states.

Some of them however, in all probability exist beyond contradiction.

3.6.55 Let the convention of each State make its exceptions, then let a future and general one receive them all, and reconcile them with as much wisdom as possible.

This would certainly be some refinement.

It *could* do no *harm,* but *might* do much *good.*

3.6.56 To conclude, my friends and fellow-citizens, have the proposed constitution revised, corrected and amended—have every dubious expression be made plain and clear—have every power accurately defined and well understood, and your own rights and privileges clearly stated, or a declaration made that all powers that are not by this constitution delegated to Congress, are reserved for your own disposal.

Then and not till then, will impartial justice rule over our land, and America become the theatre of equity and wisdom, as she has already been the field of patriotism and bravery.

This once obtained, we shall be happy and free, and having enjoyed the blessings of peace and plenty under the ample shade of the tree of *liberty,* we shall deliver them down unimpaired by the corrosive influence of time to the latest posterity.

V. P.

Quod bonum, faustumque sit nobis patriaeque nostrae, sic enim nos perpetuam felicitatem Reipublicae, precari existimamus.[32]

1. Cicero, *De officiis* I.17.57.
2. The source of this epigraph has not been found.

3. The original pamphlet contained a list of errata, and the corrections have been incorporated into the text here.

4. "Would those malignant, ignorant, and short-sighted triflers, for a moment but compare the acknowledged abilities, and well-tried integrity of the late members of Convention, with their own characters, either for knowledge or political honesty, modesty alone (if they had any) would compel them to silence, and prevent their thus exposing the weakness of their heads, and the badness of their hearts. There is no doubt in Convention every possible objectionable clause was removed by the august body who had the management of the business, as far as was any way compatible with the good of the great whole, that being the leading object of all their deliberations." *Massachusetts Centinel* 17 October 1787 (One of the People).

This was a common Federalist theme, though it was seldom put quite so strongly. See for example the remarks of A Citizen of New York (John Jay) and A Citizen of America (Noah Webster): "Gentlemen out of doors therefore should not be hasty in condemning a system, which probably rests on more good reasons than they are aware of, especially when formed under such advantages, and recommended by so many men of distinguished worth and abilities." Ford, *Pamphlets* 75. ". . . [W]hen we reflect on these circumstances [of the distinguished men involved in the framing], it is impossible to resist impressions of respect, and we are almost impelled to suspect our own judgements, when we call in question any part of the system, which they have recommended for adoption. Not having the same means of information, we are more liable to mistake the nature and tendency of particular articles of the constitution, or the reasons on which they were admitted." Ford, *Pamphlets* 64. See also *The Federalist* no. 2, 10–12; no. 38; Ford, *Essays* 20–21 (Cassius), 288–89 (Caesar); *Maryland Journal and Baltimore Advertiser* 4 March 1788 (Aristides); *Virginia Independent Chronicle Extraordinary* 9 April 1788 (A Freeholder). Cf. Centinel I, 2.7.5 n. 2; Old Whig I, 3.3.3 n. 3.

5. Wilson's 6 October speech. See Centinel II, 2.7.35 n. 14.

6. See Democratic Federalist 3.5.

7. See Centinel 2.7.

8. A Citizen of Philadelphia [Pelatiah Webster], *Remarks on the Address of Sixteen Members of the Assembly of Pennsylvania to their Constituents, Dated September 29, 1787. With some Strictures on their Objections to the Constitution, Recommended by the Late Federal Convention* (Philadelphia 1787). Evans no. 20871. Reprinted in McMaster and Stone 89–106.

9. A Citizen of America [Noah Webster], *An Examination into the Leading Principles of the Federal Constitution proposed by the late Convention held at Philadelphia . . .* (Philadelphia 1787). Reprinted in Ford, *Pamphlets* 25–65.

10. *The Spirit of Laws* XIX, ch. 27. A Citizen of America (Noah Webster) is cognizant of the point; his discussion is important and fuller than A Federal Republican gives him credit for. Defining tyranny as "the exercise of some power over a man, which is not warranted by law, or necessary for the public safety," A Citizen of America contends that "a people can never be deprived of their liberties, while they retain in their own hands, a power sufficient to any other power in the state." In the United States, there is no basis for a tyranny based on patrician-controlled religion or on military force (the people being armed); the source of power lies in the people, and that power consists in property. Viewing briefly Roman and English history, the writer concludes:

"Wherever we cast our eyes, we see this truth, that *property* is the basis of *power;* and this, being established as a cardinal point, directs us to the means of preserving our freedom. Make laws, irrevocable laws in every state, destroying and barring entailments; leave real estates to revolve from hand to hand, as time and accident may direct; and no family influence can be acquired and established for a series of generations—no man can obtain dominion over a large territory—the laborious and saving, who are generally the best citizens, will possess each his share of property and power, and thus the balance of wealth and power will continue where it is, in the *body of the people.*

"*A general and tolerably equal distribution of landed property is the whole basis of*

national freedom: The system of the great Montesquieu will ever be erroneous, till the words *property or lands in fee simple* are substituted for *virtue*, throughout his *Spirit of Laws*.

"*Virtue*, patriotism, or love of country, never was and never will be, till men's natures are changed, a fixed, permanent principle and support of government. But in an agricultural country, a general possession of land in fee simple, may be rendered perpetual, and the inequalities introduced by commerce, are too fluctuating to endanger government. An equality of property, with a necessity of alienation, constantly operating to destroy combinations of powerful families, is the very *soul of a republic*—While this continues, the people will inevitably possess both *power* and *freedom;* when this is lost, power departs, liberty expires, and a commonwealth will inevitably assume some other form." Ford, *Pamphlets* 55, 59. On the connection between the law and the character of the people see Federal Farmer III, 2.8.25 n. 19; on the need for civic virtue, see 3.6.21 and n. 19.

11. On the representation of classes and individuals, see *The Federalist* nos. 35–36; Federal Farmer II, 2.8.15 n. 11.

12. Cf. *The Federalist* no. 20.

13. Brackets indicate doubtful readings due to cut page.

14. *The Spirit of Laws* II, ch. 2.

15. An American Citizen [Tench Coxe], "An Examination of the Constitution for the United States of America . . ." 1788; Ford, *Pamphlets* 151–52.

16. James Wilson, "Address to the Citizens of Philadelphia," McMaster and Stone 148. See Centinel II, 2.7.52 n. 30.

17. McMaster and Stone 95.

18. See Brutus I, 2.9.18.

19. Bernard Mandeville, *The Fable of the Bees: or Private Vices, Publick Benefits* (1714). For other Anti-Federal discussions of the need for civic virtue see Alfred 3.10.6; Republican Federalist 4.13.10; Henry 5.16.8; Rowland, *The Life of George Mason* II, 105 (15 May 1787 letter from Lee to Mason). See also Turner 4.18.2 n. 2. Cf. Webster's important denial that virtue is the principle of a republic, above, n. 10; also *State Gazette of South Carolina* 10 December 1787 (Cato). The Federalists were likely to argue that civic virtue is as much a result as a cause of good government. See McMaster and Stone 298 (Yeates), 419–20 (Rush), 415–16 (Wilson); *New York Journal* 25 October 1787 (A Slave); Ford, *Pamphlets* 131 (A Citizen of Philadelphia).

20. Ford, *Pamphlets* 54. On the slave trade, see Martin 2.4.15 n. 24.

21. *The Spirit of Laws* XI, ch. 6.

22. See Centinel II, 2.7.44 n. 24 (Blackstone, *Commentaries* III, 379–80).

23. John Adams, *Defence* I, letter 22 (*Works* IV, 369–70).

24. The source of this quotation has not been found.

25. A Citizen of America, Ford, *Pamphlets* 45–46.

26. Adams, *Defence* I, letter 22 (*Works* IV, 363).

27. Ibid. letter 19 (Works IV, 349–50).

28. McMaster and Stone 101.

29. Ibid. 143.

30. See Federal Farmer XVI, 2.8.196 n. 116.

31. The Citizen of America described the painter who wished each spectator to mark the part that displeased him and soon found the whole piece defaced. Ford, *Pamphlets* 63.

32. Suetonius.

Address of John Humble

(PHILADELPHIA) INDEPENDENT GAZETTEER
29 October 1787

This crude satire charges that the new Constitution is an engine of the rich in their perennial struggle to enslave the poor. It does not purport to be a reasoned criticism of the Constitution but to display the feelings of the many, the largely inarticulate "John Humbles" of America.

The humble address of the *low born* of the United States of America, to their fellow slaves scattered throughout the world—greeting.

Whereas it hath been represented unto us that a most dreadful disease 3.7.1
hath for these five years last past infected, preyed upon, and almost ruined the government and people of this our country; and of this malady we ourselves have had perfect demonstration, not mentally, but bodily, through every one of the five senses: For although our sensations in regard to the mind be not just so nice as those of the *well born;* yet our feeling, through the medium of the plow, the hoe, and the grubbing axe, is as accute as any nobleman's in the world. And whereas a number of skilful physicians having met together at Philadelphia last summer, for the purpose of exploring, and if possible removing the cause of this direful desease, have, through the assistance of John Adams, Esquire, in the profundity of their great political knowledge, found out and discovered, that nothing but a new government consisting of three different branches, namely, *king, lords,* and *commons,* or in the American language, *president, senate,* and *representatives,* can save this our country from inevitable destruction.—And whereas it hath been reported that several of our *low-born* brethern have had the horrid audacity to think for themselves in regard to this new system of government, and, *dreadful thought!* have wickedly began to doubt concerning the perfection of this evangelical constitution, which our political doctors have declared to be a panacea, which (by inspiration) they know will infallibly heal every distemper in the confederation, and finally terminate in the salvation of America.

Now we the *low born,* that is, all the people of the United States except 3.7.2
600 or thereabouts, *well born,* do by this our humble address, declare, and

most solemnly engage, that we will allow and admit the said 600 *well born*, immediately to establish and confirm this most noble, most excellent and truely divine constitution: And we further declare that without any equivocation or mental reservation whatever we will support and maintain the same according to the best of our power, and after the manner and custom of all other slaves in foreign countries, namely by the sweat and toil of our body: Nor will we at any future period of time ever attempt to complain of this our *royal* government, let the consequences be what they may.—And although it appears to us that a *standing army*, composed of the purgings of the jails of Great Britain, Ireland and Germany, shall be employed in collecting the *revenue* of this our king and government; yet, we again in the most solemn manner declare, that we will abide by our present determination of non assistance and passive obedience; so that we shall not dare to molest or disturb those military gentlemen in the service of our royal government. And (which is not improbable,) should any one of those soldiers when employed on duty in collecting the *taxes*, strike off the arms (with his sword,) of one of our *fellow slaves*, we will conceive our case remarkably fortunate if he leaves the other arm on.—And moreover because we are aware that many of our fellow slaves shall be unable to pay their *taxes*, and this incapacity of theirs is a just cause of impeachment of treason; wherefore in such cases we will use our utmost endeavours, in conjunction with the *standing army*, to bring such attrocious offenders before our *federal judges*, who shall have power without *jury* or *trial*, to order the said miscreants for immediate execution; nor will we think their sentence severe unless after being hanged they are also to be both *beheaded* and *quartered*.—And finally we shall hence forth and forever, leave all *power*, *authority*, and *dominion* over our *persons* and *properties* in the hands of the *well born*, who were designed by Providence to *govern*. And in regard to the *liberty of the press* we renounce all claim to it forever more, Amen; and we shall in future be perfectly contented if our *tongues* be left us to lick the feet of our well born masters.

Done on behalf of three millions of
low born American slaves.
John Humble, Secretary.

Letter by An Officer of the Late Continental Army

(PHILADELPHIA) INDEPENDENT GAZETTEER
6 November 1787

This short essay was written, according to Paul Leicester Ford, by William Findley. It is taken here from its first publication, in the Philadelphia *Independent Gazetteer*, but it was widely reprinted in newspapers and was republished both as a broadside and as a short pamphlet.[1] The essay is not of major importance and lacks a sustained argument; but it does contain a list of twenty-three typical Anti-Federalist objections: that the government is not a confederation, which will lead either to violence or the swallowing up of the states in a universal aristocracy (nos. 1–5); that there is no Bill of Rights reserving the rights of individuals and estates and no provision for trial by jury and liberty of the press (nos. 6–9); that Congress is given power to keep up a standing army and to command the militia (nos. 10, 21); that the legislative and executive powers are not kept separate (nos. 11–12); that the executive power is in the hands of an elected king to whom, nevertheless, the people will turn in case the Senate is corrupted (nos. 15–16); that the representation in the national legislature is too small and responsibility insufficiently secured (nos. 13–14, 17–19); that the slave trade may not be abolished until 1808 and slavery will probably be reintroduced into Pennsylvania (no. 20); that the new government will be expensive, of a monarchial and aristocratic character, and destructive of liberty (nos. 22–23). In conclusion, the Officer strongly criticizes James Wilson as a self-serving aristocrat, contends that no adequate defense of the Constitution has been made, and urges that the people not be blinded by the splendor of the name put forward in its defense.

The essay was answered in detail by Plain Truth in the *Independent Gazetteer*, 10 November 1787.[2] The most interesting points in the reply are given in the notes below.

1. Paul Leicester Ford, *Bibliography and Reference List of the History and Literature Relating to the Adoption of the Constitution of the United States, 1787–1788* (Brooklyn, N.Y., 1896) nos. 79–80; Evans, *Early American Imprints* nos. 20357, 20358. On Findley see above, 3.1.intro. n. 3.

2. Plain Truth's essay is reprinted in McMaster and Stone 187–95.

Mr. Oswald,

By inserting the following in your impartial paper, you will oblige yours, etc.

To the Citizens of Philadelphia.

Friends, Countrymen, Brethren and Fellow Citizens,

3.8.1 The important day is drawing near when you are to elect delegates to represent you in a Convention, on the result of whose deliberations will depend, in a great measure, your future happiness.

This convention is to determine whether or not the commonwealth of Pennsylvania shall adopt the plan of government proposed by the late convention of delegates from the different states, which sat in this city.

With a heart full of anxiety for the preservation of your dearest rights, I presume to address you on this important occasion—In the name of sacred liberty, dearer to us than our property and our lives, I request your most earnest attention.

3.8.2 The proposed plan of continental government is now fully known to you. You have read it I trust with the attention it deserves—You have heard the objections that have been made to it—You have heard the answers to these objections.

If you have attended to the whole with candor and unbiassed minds, as becomes men that are possessed and deserving of freedom, you must have been alarmed at the result of your observations. Notwithstanding the splendor of names which has attended the publication of the new constitution, notwithstanding the sophistry and vain reasonings that have been urged to support its principles; alas! you must at least have concluded that great men are not always infallible, and that patriotism itself may be led into essential errors.

3.8.3 The objections that have been made to the new constitution, are these:

1. It is not merely (as it ought to be) a CONFEDERATION of STATES, but a GOVERNMENT of INDIVIDUALS.

2. The powers of Congress extend to the *lives*, the *liberties* and the *property* of every citizen.

3. The *sovereignty* of the different states is *ipso facto* destroyed in its most essential parts.

4. What remains of it will only tend to create violent dissentions between the state governments and the Congress, and terminate in the ruin of the one or the other.

5. The consequence must therefore be, either that the *union* of the states will be destroyed by a violent struggle, or that their sovereignty will be swallowed up by silent encroachments into a universal aristocracy; because it is clear, that if two different *sovereign powers* have a co-equal command

over the *purses* of the citizens, they will struggle for the spoils, and the weakest will be in the end obliged to yield to the efforts of the strongest.

6. Congress being possessed of these immense powers, the liberties of the states and of the people are not secured by a bill or DECLARATION OF RIGHTS.

7. The *sovereignty* of the states is not expressly reserved; the *form* only, and not the SUBSTANCE of their government, is guaranteed to them by express words.[1]

8. TRIAL BY JURY, that sacred bulwark of liberty, is ABOLISHED IN CIVIL CASES, and Mr. W[ilson], one of the convention, has told you, that not being able to agree as to the FORM of establishing this point, they have left you deprived of the SUBSTANCE. Here are his own words—*The subject was involved in difficulties. The convention found the task* TOO DIFFICULT *for them, and left the business as it stands.*[2]

9. THE LIBERTY OF THE PRESS is not secured, and the powers of congress are fully adequate to its destruction, as they are to have the trial of *libels*, or *pretended libels* against the United States, and may by a cursed abominable STAMP ACT (as the *Bowdoin administration* has done in Massachusetts) preclude you effectually from all means of information.[3] Mr. W[ilson] has given you no answer to these arguments.

10. Congress have the power of keeping up a STANDING ARMY in time of peace, and Mr. W[ilson] has told you THAT IT WAS NECESSARY.

11. The LEGISLATIVE and EXECUTIVE powers are not kept separate as every one of the American constitutions declares they ought to be; but they are mixed in a manner entirely novel and unknown, even to the constitution of Great Britain; because,

12. In England the king only, has a *nominal negative* over the proceedings of the legislature, which he has NEVER DARED TO EXERCISE since the days of *King William*, whereas by the new constitution, both the *president general* and the *senate* TWO EXECUTIVE BRANCHES OF GOVERNMENT, have that negative, and are intended to *support each other in the exercise of it*.

13. The representation of the lower house is too small, consisting only of 65 members.

14. That of the *senate* is so small that it renders its extensive powers extremely dangerous: it is to consist only of 26 members, two-thirds of whom must concur to conclude any *treaty or alliance* with foreign powers: Now we will suppose that five of them are absent, sick, dead, or unable to attend, *twenty-one* will remain, and eight of these (*one-third*, and *one* over) may prevent the conclusion of any treaty, even the most favorable to America. Here will be a fine field for the intrigues and even the *bribery* and *corruption* of European powers.

15. The most important branches of the EXECUTIVE DEPARTMENT are to be put into the hands of a *single magistrate*, who will be in fact an ELECTIVE

KING. The MILITARY, the land and naval forces are to be entirely at his disposal, and therefore:

16. Should the *senate*, by the intrigues of foreign powers, become devoted to foreign influence, as was the case of late in *Sweden*, the people will be obliged, as the *Swedes* have been, to seek their refuge in the arms of the *monarch* or PRESIDENT GENERAL.[4]

17. ROTATION, that noble prerogative of liberty, is entirely excluded from the new system of government, and great men may and probably will be continued in office during their lives.

18. ANNUAL ELECTIONS are abolished, and the people are not to reassume their rights until the expiration of *two*, *four* and *six* years.

19. Congress are to have the power of fixing the *time*, *place* and *manner* of holding elections, so as to keep them forever subjected to their influence.

20. The importation of slaves is not to be prohibited until the year 1808, and SLAVERY will probably resume its empire in Pennsylvania.

21. The MILITIA is to be under the immediate command of congress, and men *conscientiously scrupulous of bearing arms*, may be compelled to perform military duty.[5]

22. The new government will be EXPENSIVE beyond any we have ever experienced, the *judicial* department alone, with its concomitant train of *judges, justices, chancellors, clerks, sheriffs, coroners, escheators, state attornies and solicitors, constables, etc.* in every state and in every country [county?] in each state, will be a burden beyond the utmost abilities of the people to bear, and upon the whole.

23. A government partaking of MONARCHY and aristocracy will be fully and firmly established, and liberty will be but a name to adorn the *short* historic page of the halcyon days of America.

3.8.4 These, my countrymen, are the objections that have been made to the new proposed system of government; and if you read the system itself with attention, you will find them all to be founded in truth. But what have you been told in answer?

3.8.5 I pass over the sophistry of Mr. W[ilson], in his equivocal speech at the state house.[6] His pretended arguments have been echoed and re-echoed by every retailer of politics, and *victoriously* refuted by several patriotic pens. Indeed if you read this famous speech in a cool dispassionate moment, you will find it to contain no more than a train of pitiful sophistry and evasions, unworthy of the man who spoke them. I have taken notice of some of them in stating the objections, and they must, I am sure, have excited your *pity* and *indignation*. Mr. W[ilson] is a man of sense, learning and extensive information, unfortunately for him he has never sought the more solid fame of *patriotism*. During the late war he narrowly escaped the effects of popular rage, and the people seldom arm themselves against a citizen in vain. The whole tenor of his political conduct has always been strongly tainted with

the spirit of *high aristocracy*, he has never been known to join in a truly popular measure, and his talents have ever been devoted to the patrician interest. His lofty carriage indicates the lofty mind that animates him,[7] a mind able to conceive and perform great things, but which unfortunately can see nothing great out of the pale of power and worldly grandeur; despising what he calls the inferior order of the people, popular liberty and popular assemblies offer to his exalted imagination an idea of meanness and contemptibility which he hardly seeks to conceal—He sees at a distance the pomp and pageantry of courts, he sighs after those stately palaces and that apparatus of human greatness which his vivid fancy has taught him to consider as the supreme good. Men of sublime minds, he conceives, were born a different race from the rest of the sons of men, to them, and them only, he imagines, high heaven intended to commit the reins of earthly government, the remaining part of mankind he sees below at an immense distance, they, he thinks were born to serve, to administer food to the ambition of their superiors, and become the footstool of their power—Such is Mr. W[ilson], and fraught with these high ideas, it is no wonder that he should exert all his talents to support a form of government so admirably contrived to carry them into execution—But when the people, who possess collectively a mass of knowledge superior to his own, inquire into the principles of that government on the establishment or rejection of which depend their dearest concerns, when he is called upon by the voice of thousands to come and explain that favorite system which he holds forth as an object of their admiration, he comes—he attempts to support by reasoning what reason never dictated, and finding the attempt vain, his great mind, made for nobler purposes, is obliged to stoop to mean evasions and pitiful sophistry; himself not deceived, he strives to deceive the people, and the treasonable attempt delineates his true character, beyond the reach of the pencil of a *West* or *Peale*, or the pen of a *Valerius*.

3.8.6 And yet that speech, weak and insidious as it is, is the only attempt that has been made to support by argument that political monster THE PROPOSED CONSTITUTION. I have sought in vain amidst the immense heap of trash that has been published on the subject, an argument worthy of refutation, and I have not been able to find it. If you can bear the disgust which the reading of those pieces must naturally occasion, and which I have felt in the highest degree, read them, my fellow citizens, and say whether they contain the least shadow of logical reasoning, say (laying your hands upon your hearts) whether there is any thing in them that can impress unfeigned conviction upon your unprejudiced minds.

3.8.7 One of them only I shall take notice of, in which I find that argument is weakly attempted. This piece is signed "AN AMERICAN CITIZEN" and has appeared with great pomp in four succeeding numbers in several of our newspapers.[8] But if you read it attentively, you will find that it does not tell

us what the new constitution IS, but what it is NOT, and extolls it on the sole ground that it does not contain ALL the principles of tyranny with which the European governments are disgraced.

3.8.8 But where argument entirely failed, nothing remained for the supporters of the new constitution but to endeavor to inflame your passions—The attempt has been made and I am sorry to find not entirely without effect. The great names of WASHINGTON and FRANKLIN, have been taken in vain and shockingly prostituted to effect the most infamous purposes. What! because our august chieftain has subscribed his name in his capacity of president of the convention to the plan offered by them to the states, and because the venerable sage of Pennsylvania, has *testified* by his signature that *the majority of the delegates of this state* assented to the same plan, will any one infer from this that it has met with their entire approbation, and that they consider it as the master piece of human wisdom? I am apt to think the contrary, and I have good reasons to ground my opinion on.

3.8.9 In the first place we have found by the publication of *Charles Cotesworth Pinckney*, Esquire, one of the *signing* members of the convention, who has expressed the most pointed disapprobation of many important parts of the new plan of government, that all the members whose names appear at the bottom of this instrument of tyranny have not concurred in its adoption.[9] Many of them might conceive themselves bound by the opinion of the majority of their state, and leaving the people to their own judgment upon the form of government offered to them, might have conceived it impolitic by refusing to sign their names, to offer to the world the lamentable spectacle of the disunion of a body on the decisions of whom the people had rested all their hopes. We KNOW, and the long sitting of the convention tells us, that, (as it is endeavoured to persuade us) concord and unanimity did not reign exclusively among them. The thick veil of secrecy with which their proceedings have been covered, has left us entirely in the dark, as to the *debates* that took place, and the unaccountable SUPPRESSION OF THEIR JOURNALS, the highest insult that could be offered to the majesty of the people, shews clearly that the whole of the new plan was entirely the work of an *aristocratic majority*.

3.8.10 But let us suppose for a moment that the proposed government was the unanimous result of the deliberations of the convention—must it on that account preclude an investigation of its merits? Are the people to be dictated to without appeal by any set of men, however great, however dignified? Freedom spurns at the idea and rejects it with disdain—We appeal to the collective wisdom of a great nation, we appeal to their general sense which is easily to be obtained through the channel of a multitude of free presses, from the opinions of *thirty-nine* men, who secluded from the rest of the world, without the possibility of conferring with the rest of their fellow-citizens, have had no opportunity of rectifying the errors into which they may have been led by the *most designing* among them. We have seen names

not less illustrious than those of the members of the late convention, subscribed to the present *reprobated* articles of confederation, and if those patriots have erred, there is no reason to suppose that a succeeding set should be more free from error. Nay the very men, who advocate so strongly the new plan of government, and support it with the infallibility of Doctor Franklin, affect to despise the present constitution of Pennsylvania, which was dictated and avowed by that venerable patriot—They are conscious that he does not entirely approve of the new plan, whose principles are so different from those he has established in our ever-glorious constitution, and there is no doubt that it is the reason that has induced them to leave his respected name out of the *ticket* for the approaching election.

Now then my fellow-citizens, my brethren, my friends; if the sacred flame 3.8.11
of liberty be not extinguished in your breasts, if you have any regard for the happiness of yourselves, and your posterity, let me entreat you, earnestly entreat you by all that is dear and sacred to freemen, to consider well before you take an awful step which may involve in its consequences the ruin of millions yet unborn—You are on the brink of a dreadful precipice;—in the name therefore of holy liberty, for which I have fought and for which we have all suffered, I call upon you to make a solemn pause before you proceed. One step more, and perhaps the scene of freedom is closed forever in America. Let not a set of aspiring despots, *who make us* SLAVES and *tell us 'tis our* CHARTER, wrest from you those invaluable blessings, for which the most illustrious sons of America have bled and died—but exert yourselves, like men, like freemen and like Americans, to transmit unimpaired to your latest posterity those rights, those liberties, which have ever been so dear to you, and which it is yet in your power to preserve.

An Officer of the late Continental Army.

Philadelphia, November 3, 1787.

1. Plain Truth replied: "When man emerged from a state of nature, he surely did not reserve the natural right being the judge of his wrongs, and the executioner of the punishments he might think they deserved. A renunciation of such rights, is the price he paid for the blessings of good government; and for the same reason, state sovereignty (as I have before observed) is as incompatible with the federal union, as the natural right of human vengeance is, with the peace of society." McMaster and Stone 189. Cf. Federal Farmer VI, 2.8.80 n. 55.

2. James Wilson, "Address to the Citizens of Philadelphia," McMaster and Stone 144–45.

3. *Acts and Laws of the Commonwealth of Massachusetts* (Boston 1784) III (1784–85). Plain Truth's reply is interesting in its movement from narrow (and probably indefensible) to broader and better grounds: "The liberty of the press in each state can only be in danger from the laws of that state, and it is everywhere well secured. Besides, as the new Congress can only have the defined powers given, it was needless to say anything about the liberty of the press, liberty of conscience, or any other liberty that a freeman ought never to be deprived of. It is remarkable in this instance, that among all the cases to which the federal jurisdiction is to extend (art. 3), not a word is said of 'libels or pretended libels.' Indeed, in this extensive continent, and among this enlightened people, no government whatever *could* control the press. For after all that is said about 'balance of power,' there is one power which no

tyranny on earth could subdue if once roused by this great and general grievance, that is, the people. This respectable power has preserved the press in Great Britain in spite of government; and none but a madman could ever think of controlling it in America." McMaster and Stone 190–91. Cf. Madison's letter to Jefferson, 17 October 1788, Madison, *Writings* (ed. Hunt) V, 269–75; see Federal Farmer X, 2.8.139 n. 91.

4. Plain Truth answers in terms that anticipate the defense of the large republic fully enunciated by Publius in *The Federalist* no. 10: "The comparison of a little kingdom to a great republic, cannot be just. The revolution in Sweden was the affair of a day, and the success of it was owing to its confined bounds. To suppose a similar event in this extensive country, 3000 miles distant from European intrigues, is, in the nature of things, a gross absurdity." McMaster and Stone 193. See Agrippa IV, 4.6.16 n. 10.

5. See Centinel III, 2.7.76 n. 39. Plain Truth argues that men conscientiously scrupulous of bearing arms are not forced to do so in any state and that "whatever redress may be wished for, or expected, can only come from the State Legislature, where, and where only, the dispensing power, or enforcing power, is in the first instance placed." McMaster and Stone 194.

6. See above, n. 2.

7. According to Plain Truth, Wilson's " 'lofty carriage,' is very like to be the effect of habit; for I know by experience that a man who wears spectacles, must keep his head erect to see through them with ease, and to prevent them from falling off his nose." McMaster and Stone 187.

8. [Tench Coxe] *An Examination of the Constitution for the United States of America . . .*, 1788; Ford, *Pamphlets* 133–54. The pamphlet version, which Ford reprints, is substantially the same as the newspaper version to which An Officer refers and which appeared in numerous newspapers in the late months of 1787.

9. The author is probably referring not to Charles Cotesworth Pinckney but to Charles Pinckney, whose *Observations on the Plan of Government Submitted to the Federal Convention* appeared in October 1787 (see Farrand III, 106–23); Pinckney's *Observations*, an edited version of his speeches and proposals in the Philadelphia convention, does not support the Officer's contentions, however.

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Essays of Philadelphiensis

(PHILADELPHIA) INDEPENDENT GAZETTEER
November 1787–April 1788

The essays of Philadelphiensis appeared between November 1787 and April 1788 simultaneously (or, in the case of those published in 1788, a day or two apart) in two Philadelphia newspapers, the *Independent Gazetteer* and the *Freeman's Journal*, except for three essays (V, VII, XI), which appeared only in the former journal. Some of them were reprinted in several northern papers. The series is taken here from the *Independent Gazetteer*. The author was a mathematics instructor at the University of Pennsylvania, Benjamin Workman, who had recently emigrated to the United States from Ireland. He was identified as the author by Francis Hopkinson, who suggested that the trustees of the University of Pennsylvania might wish to consider "whether the legislature hath so munificently endowed that institution to make it the hot-bed of sedition; or whether, after this narative, it will be prudent in them to continue in their service, as an instructor of youth, a man who is so wickedly endeavoring to disturb the public tranquility." He suggested to parents the question "whether the principles of youth are likely to be improved under the tuition of an hackneyed, hired party scribbler." Workman replied in kind and the little fire raged for several weeks.[1]

The essays have no clear order, but they contain some substantial arguments. A brief summary follows.

Essay I (3.9.1–7). Federalist attempts to stifle free discussion of the proposed Constitution are an indication of what government under that Constitution would be like.

Essay II (3.9.8–16). Addressed primarily to the Pennsylvania Quakers: (1) good government tends to promote religion and morality; (2) there is no provision in the Constitution for exempting conscientious objectors from bearing arms, and indeed the military president will despise and distrust them; (3) the absence of any provision for liberty of conscience indicates either an indifference to religion or a wish to compel conformity to one belief; (4) it is strange that some Quakers, foes of all forms of slavery, should support this constitution of despotism.

Essay III (3.9.17–22). It is now clear that the great men of America who took an active part in independence were acting in behalf of their own ambition rather than of patriotism. While we do want an efficient federal government, the proposed Constitution cannot provide it: (1) there is no protection of the liberty of conscience, press, and jury trials; (2) taxes must be so high as to take our whole produce; (3) the government will not be able to protect against foreign enemies because a government to be strong must be free and patriotic and the people wealthy and well affected, whereas under the Constitution the case will be the reverse.

Essay IV (3.9.24–30). (The argument of the latter part of essay III is repeated and elaborated. Then:) Because of the great love Americans have for their country, many are willing to overlook deficiencies in the Constitution, believing that it will promote American respectability and greatness. But this is a delusion. The standing army will be needed to keep the country in submission, could not conveniently be called to meet an emergency, and would in any case not fight; the militia would be dispirited and weak. Nor can a navy be built under a system which deprives the states both of resources and incentive and which ensures that the federal government will be too expensive to build a navy. (This is a rather unusual Anti-Federalist argument.)

Essay V (3.9.31–36). This essay adds little or nothing to the argument, consisting entirely in warm denunciation of the scorn with which the well-born proponents of the Constitution treat the opinion of the people and the tyranny that this foreshadows. Fortunately the tyrants revealed the plan prematurely, and in that Providential mistake lies the cause of their forthcoming defeat.

Essay VI (3.9.37–43). Only a system of perfect freedom is consistent with the principle of the American Revolution; only a free America can be strong and respectable; and the Constitution will destroy that freedom. Those who suggest, as a compromise, the addition of a declaration of rights do not understand that such a declaration would effectually annihilate the Constitution; but the proponents understand that and consequently refuse to accept any such declaration.

Essay VII (3.9.44–48). A navy is necessary to maintain United States national commerce and respectability, but all the available resources will go to support the standing army, which will be needed to maintain the new government and benefit the well-born governors.

Essay VIII (3.9.49–57). Philadelphiensis dilates on the importance of the liberty of the press, especially in an extensive country, where it is the chief means of rousing free men to guard their liberties, exposing the tyrant, and rewarding the patriot. A new trick to get Anti-Federalist writers to expose their names will doubtless be resisted; anonymity promotes genuine political debate. Despite attempts to stifle the freedom of the press, there is no

sign that the Anti-Federalists will cease their opposition even if nine states ratify.

Essay IX (3.9.58–72). Writers against the Constitution are called incendiaries, but they seek only to prevent the destruction of American liberties and the consolidation of our thirteen free commonwealths into one despotic monarchy. The "president-general" will be an elected king with command of a standing army. The government will be a combination of aristocracy and monarchy, with no real democratic part. The citizen will be left without the protection of a bill of rights. Every patriot should exert himself to secure a new convention which could form a government consistent with the principles of the American revolution.

Essay X (3.9.73–81). The Federalists hasten the decision before the people can be alerted to the danger, as in Pennsylvania and Maryland. In Massachusetts the minority is large, and the proposed amendments leave the main principles of the Constitution untouched. A halt should be called to ratification proceedings and a second convention called. A purely democratic America would be a happier and stronger nation, but what is proposed here is a government of an elected king and a standing army. The new Congress, unlike the state legislatures, will not be the immediate representatives of the people; its numbers are too small, its powers too great.

Essay XI (3.9.82–92). Members of the Convention betrayed their trust, intending to avoid rendering an account of public monies fraudently retained. Pennsylvania will get no credit for past payments, but the delinquent states will not gain either, because the taxes henceforth will be as oppressive as tyranny can make them. The struggle over the proposed Constitution is not like the healthy party controversies in Britain, because it involves the fundamental question whether the principles of the revolution are to be discarded or not. It is a delusion to suppose that amendments will be made after ratification. (See XI, 3.9.90–91 for important arguments on parties.)

Essay XII (3.9.93–98). While some futile attempts have been made to defend the size and power of the national legislature, no one has been so bold as to attempt to defend the President-General. An American Citizen attempted a feeble defense, by a false comparison with the King of Great Britain, but the weakness of the argument is obvious and there has been nothing since. Let another Convention be immediately called and a form of government consistent with the principles of the Revolution be formed; then America will be both free and respectable.

1. Hopkinson's first essay, over the signature "A.B." appeared in the *Independent Gazetteer* 11 March 1788; Workman wrote a series of replies and justifications, which appeared in the same journal (26 March, 1 April, 15 April, 24 April, 29 April 1788). See letter from Hopkinson to Thomas Jefferson, 6 April 1788, *Documentary History of the Constitution* IV, 562–64. See Centinel XI, 2.7.144.

I

3.9.1 When the advocates of a cause use their endeavours to stop a free and thorough investigation of the subject, we as naturally and as justly infer that the cause is a bad one, as that two and two make four. A good cause, like pure gold may be tried in the fire, and yet retain its full weight and value; or like the utensils of husbandry, grow brighter and fitter for use the more it is handled. The application of this observation in regard to the friends of the new constitution, is easy. They see, that the more this new scheme of government is discussed, the more tyrannical and ill-adapted to the present circumstances of America does it appear. We find, say they, that to reason in favour of the constitution, is only to give its enemies more latitude to condemn: for although we could call in to our aid a sufficient stock of sophistical arguments and circumstances, by which we might dispose the incautious part of the people to join us in establishing this government; yet we have already experienced that by such means, we defeat ourselves; as we thereby give a greater scope for those of more penetration, to write against the constitution. The advocates of this government have also tried an expedient which has been known to succeed upon some occasions, namely, to answer *reason* and *argument* with scurrility and personal invective; but even here they have failed; for the magnitude of the object is so great, as to reduce every little circumstance of this kind, to a mere point. In little matters, this kind of procedure might do well enough; but in an affair of such vast importance to the whole Continent of America, its operation is nugatory.

3.9.2 In this desperate situation of affairs, it need not to be wondered at, that the friends of this despotic scheme of government, were driven to the last and only alternative from which there was any probability of success; namely, the abolition of *the freedom of the Press*. And accordingly, we find in the Independent Gazetteer of the 29th of October, a writer who signs himself a Pennsylvania Mechanic, says, "It appears by a late eastern paper, that the publisher of the Massachusetts Gazette, is determined to publish no sentiments on this important subject, (viz. the new constitution) unless the writers leave their names with the printer; that any one who may be desirous of knowing the author, may be informed. No honest man, no true friend to America or to the liberty and happiness of mankind, can object to this—For your imitation, gentlemen, I humbly propose the conduct of this your worthy brother, the publisher of the Massachusetts gazette."[1] This Pennsylvania Mechanic one would take to be a blacksmith, whose true employment, is to construct chains to confine to perpetual slavery, the freemen of America; but be that as it may, we find that he can soon call in more of his fellow craftsmen to his assistance, who even seem to be more expert at their occupation than our mechanic above-mentioned: One of these tradesmen

has given us a small portion of his skill of chain-making, in the Independent Gazetteer of the 31st of October, under the signature of Galba; which small scrap of his workmanship, I beg leave to transcribe, that we may be the better able to judge of its excellency: He says, "Mr. Oswald, The hint in your paper of last Monday, that every one ought to leave his name with the printer who writes for or against the new form of government proposed by the honorable convention, is only, in my opinion, true[2] in part; for what reason is there that the patriotic gentlemen who write in favour of a scheme of government that holds forth peace, happiness and prosperity to our distressed country, should by leaving their names with the printers, be exposed to the malevolence of those wretches who pretend to find fault with it. Indeed I think it perfectly right that those who wantonly write against it should leave their names, that they may be justly exposed to the contempt and indignation of their fellow citizens, as enemies and traitors to their country; and I hope every patriotic printer in the union, will for the future pay proper attention to the justness and absolute propriety of this hint."

Stop and pause a little Galba, I really believe you were not in your right 3.9.3
senses when you wrote this your hint; for if you had been studying for seven years how you might effectually injure the new constitution, you could not have hit upon a thought more to your purpose: Your zeal has transported you so far beyond the bounds of propriety and discretion, that the haughtiest lordling and friend to arbitrary government in America, must hang down his head and blush upon reading your ill-timed hint.—I assure you sir, I think you have explained yourself right cleverly: You have given us a specimen of the genius and spirit of our new government: Here we see pretty plainly through your excellent regulation of the press, how things are to be carried on after the adoption of the new constitution: All the writings must be on ONE SIDE. The new constitution appears so glorious and immaculate to Galba, that all those who have sufficient spirit to avow their sentiments on the occasion, are to be called traitors and enemies to their country, if they do not think just as he does: And to render them still more odious and execrable, he would have the printers throughout the union, to publish their names with their pieces, should any of them have the imprudence of writing on the subject.—I wonder that Galba did not propose a suit of tar and feathers; but as the taylors have of late become a little bashful about trying on this sort of apparel, and the conceit is therefore a little stale, he would have those obnoxious writers to leave their names with the printers, that they may be cloathed by their fellow citizens with *indignation and contempt* as with a garment; whilst he would have the patriotic writers in favor of the constitution, entirely exempted from such an abstracted kind of a coat and jacket.—We thank you Galba for your kind and very liberal hint; for it certainly merits our attention. I make no doubt but it is the wish of a thousand of our *well born* as well as of yourself, that the printers would comply with your request: Such a thought is natural enough;—it must na-

tively be the wish of every *little petty* tyrant in the United States.—But most of the printers in Philadelphia are men of sentiment; they are lovers of liberty and the rights of mankind, and will necessarily despise such hints, and treat them with the contempt they deserve: There is such a degree of meanness in the requisition especially in that of Galba longhead, as must insult the understanding and integrity of every independent printer who sees it.

3.9.4 Galba your hint was rather calculated for the meridian of Boston, than that of Philadelphia; and I doubt not, but you and the Boston printers have one and the same object: *Self* is an old fellow: This trite saying will apply.—In Boston the liberty of the press is now completely abolished; and hence all other privileges and rights of the people will in a short time be destroyed: No wonder then that the printers in Boston would exert themselves in favor of this new government: Their present condition is a drawing in miniature of that[3] in which the adoption of the new constitution will certainly place the whole union; so that after the nature of the prince of darkness, they wish to have all their fellow citizens in the same dreadful situation with themselves.—Russell, the printer of the Massachusetts Centinel, has the effrontery to insult the freemen of America so far, as to say in his paper of October the 10th, "That aiming thereby to be just, he is determined not to give place to any piece against the new constitution except the writers leave their names to be made public if desired."[4]—Russell I would not hire a mob to bear you aloft as an object of hatred and contempt, nor would I bribe them to hang you in effigy, although you really deserve it; I am sensible of the danger of inflaming the multitude under a free government; for when a public tumult has once been raised, justice has often been sacrificed to appease it; so that I do not intend to raise a fatal prejudice against you; my intention is to consider the nature and consequences of your conduct, as an advocate for the new constitution, which as far as it respects the liberty of the press, has done more prejudice to your cause, than its enemies can do by the violence of their accusations, however well they may be founded.

3.9.5 On so momentous a subject as the new constitution, it is as plain as any axiom in geometry, that it is of no importance whether or not a writer gives his name; it is with the illustrations and arguments he affords us, and not with his name, we have any concern: Besides this practice would tend to draw off the mind of the writer from the calm investigation of the subject, to recriminations and personal invective: And moreover men of ability, of a modest, timid, or diffident cast of mind, would be detered altogether from publishing their sentiments.[5]—Of what use could it be to the public to know the name of the writer of the piece signed Lucius, that Russell refused to publish? Certainly of no use at all. Non quis sed quid: It was not with the author of Lucius that the freemen of Massachusetts had anything to do, but with his reasoning, which if it were

just ought not to be suppressed, and if it were fallacious should be refuted.—Let candor and impartiality be the characteristics of our printers, in respect to this new government which involves in its consequences the happiness or misery of millions yet unborn: This is the line of conduct which men of honor and integrity will naturally pursue, and I find an unspeakable satisfaction, when I every day behold the printers of Philadelphia following this path almost to a man: And hence I am led to conclude that the Pennsylvania mechanic and his successor Galba, must find their hints to be a little premature; such doctrine might have been suited finely about the time of the mock ringing of the bells in this city, for joy and gladness that Congress had *recommended* the adoption of this new plan of government to the different states, which, by the by, they unluckily forgot to recommend to this present hour.

The gentlemen who are friends to the new constitution had better not blab so freely; especially in regard to the freedom of the press; they ought to wait until this government of governments is once established; and then instead of a coat and jacket of *indignation and contempt*, they may speak boldly about a gallows, a gibbet, or at least a dungeon, for such writers as the *Old Whig*, or *Centinel*, who have dared to speak like freemen.[6] I wonder that our *well born* should allow such mean fellows to write against this their government; such base wretches ought not to live in the same country with *gentlemen;* and as soon as our new government is confirmed, these vile enemies to its *splendor and dignity*, shall quit their cap[e]ring,[7] I'll warrant them; a federal soldier with a fixed bayonet will soon give such daring dogs their quietis. Ah! what glorious days are coming; how I anticipate the brilliancy of the American court! Behold that gilded chariot, set with diamonds, and drawn by eight Arabian horses; off with your hats you poltrons, here is the president going in state to the senate house to confirm the law for the abolition of the liberty of the press. Men and brethren will not these things be so? Yes most assuredly if we adopt the new constitution in its present form, these things will be so. Rouse then; rouse my fellow-citizens, and show yourselves to be freemen: This is the most important object that ever presented itself to your understanding: The independence of America, which God himself vouched safe through his infinite mercy to confer upon us, must end in a curse, if this tyrannical government be suffered to be established. But forbid it Heaven![8] 3.9.6

I was told, last Saturday evening, by a gentleman of veracity whom I met at the meeting at the state-house, that several persons had waited that day on Mrs. Oswald,* for the purpose of requesting her not to publish any pieces against the new constitution, at the same time intimating, that if she persisted, she would forfeit their interests; and that in consequence of her spirited reply, several had that very day withdrawn their subscriptions for 3.9.7

*Col. Oswald being abroad.[9]

the paper. This is truly an alarming circumstance. Where is the freeman in America that this is not sufficient to rouse from a state of supineness? My brethren, be circumspect on this momentous occasion,—"And, take unto you the whole armour of God, that ye may be able to withstand in the evil day, and having done all to stand. Stand therefore, having your loins girt about with truth, and having on the breastplate of righteousness. And your feet shod with the preparation of the gospel of peace. Above all, taking the shield of fath, wherewith ye shall be able to quench all the fiery darts of the wicked."[10] *Amen.*

Philadelphiensis.

II

3.9.8 My fellow citizens, the present time will probably form a new epoch in the annals of America: This important, this awful crisis, bids fair to be the theme of our posterity for many generations. We are now publicly summoned to determine whether we and our children are to be *freemen* or *slaves;* whether the liberty, which we have so recently purchased with the blood of thousands of our fellow countrymen, is to terminate in a blessing or a curse.

3.9.9 The establishment of a new government is a matter of such immense magnitude, that any other human transaction is small indeed, when compared to it. Great circumspection is therefore necessary on this interesting occasion: The temporal, and in some measure, even the eternal happiness of millions of souls is involved in this important work: I say even in some measure, our eternal happiness is concerned; for, that a good, or a bad government naturally influences religion and morality, is a principle indisputably confirmed by fact: Under a free and patriotic government, the bulk of the people will necessarily be virtuous; but under a tyrannical and unjust one, the greater part of the people will as necessarily be wicked: The complexion of the *governing* is ever the colour of the *governed.*

3.9.10 Every freeman possessed of the smallest portion of patriotism and general philanthropy, ought, at this critical juncture, to think seriously, to deliberate cooly, and to determine cautiously. All that is dear to him, nay all that constitutes life itself happy or miserable, is at this very moment about to be unalterably fixed: The rivet of tyranny may now be clenched, that will bind forever the freedom of America in the indissoluble chains of cursed slavery. In the adoption of the new constitution in its present form, we will lose more than all that we have fought for and gained in a glorious and successful war of seven years; yea, and still more than all this, our very character of *citizens* and *freemen* will be changed to that of *subjects* and *slaves.* In this act the bright orb of glorious liberty will go down under the horizen of cruel

oppression, never, never to illuminate our western hemisphere again! How much better that she had never cast a ray on Columbia, than thus to blaze for a moment, and then to vanish forever!

In regard to religious liberty, the cruelty of the new government will probably be felt sooner in Pennsylvania than in any other state in the union. The number of religious denominations in this state, who are principled against *fighting* or *bearing arms*, will be greatly distressed indeed.[11] In the new constitution there is no declaration in their favor; but on the contrary, the Congress and President are to have an absolute power over the *standing army*, *navy*, and *militia;* and the President, or rather *Emperor*, is to be the commander in chief. Now, I think, that it will appear plain that no exemption whatever from militia duty shall be allowed to any set of men, however conscientiously scrupulous they may be against *bearing arms*. Indeed from the nature and qualifications of the president, we may justly infer, that such an idea is altogether preposterous: He is by profession a *military man*, and possibly an old soldier: Now such a man, from his natural temper, necessarily despises those who have a conscientious aversion to a military profession, which is probably the very thing in which he principally piques himself. Only men of his own kind will be esteemed by him; his fellow soldier he will conceive to be his true friend, and the only character worthy of his notice and confidence. 3.9.11

Since in the new constitution no provision is made for securing to these peaceable citizens their religious liberties; it follows then by implication, that no such provision was intended. Their influence in the state of Pennsylvania is fully sufficient to save them from suffering very materially on this account; but in the great vortex of the whole continent it can have no weight. How can we expect that a special law will be made by the new Congress merely on their account; and yet it will be absolutely necessary that such a law shall be made, before this privilege is secured to them. Can any man rationally suppose the president will give his assent to a law in favor of the men whom he heartily despises; a law also that in its operation must curtail his own *dignity and splendor*, by reducing the number of his military? No certainly. There is not probably a military man on earth who could bear the thought; so that such a supposition is absurd. The friends of this scheme of government may possibly attempt to say, that this religious liberty is sufficiently secured by the constitution of the state. But I say not; for, this is a case in which the United States are a party; and every case of this kind, according to the new plan, must be determined by *the supreme law of the land;* that is by the Congress and President, who are to have the sole direction of the militia. This will be a matter then in which a particular state can have no concern. 3.9.12

From the proceedings of the convention, respecting *liberty of conscience*, foreign politicians might be led to draw a strange conclusion, viz. That the majority of that assembly were either men of *no* religion, or all of *one* 3.9.13

religion; such a conclusion naturally follows their silence on that subject; they must either have been indifferent about religion, or determined to compel the whole continent to conform to their own. For my own part, I really think, that their conduct in this instance is inexplicable: It is impossible to divine what might have been their intentions.

3.9.14 Before I dismiss this subject, I cannot help taking notice of the inconsistency of some Pennsylvanians, in respect to this new government. The very men, who should oppose it with all their influence, seem to be the most zealous for establishing it. Strange indeed! that the professed enemies of *negro*, and every other species of *slavery*, should themselves join in the adoption of a constitution whose very basis is *despotism* and *slavery;* a constitution that militates so far against freedom, that even their own religious liberty may probably be destroyed by it. Alas! What frail, what inconsistent beings we are! To the catalogue of human weaknesses and mistakes, this is one to be added!

Ah, my country-men our situation is critical indeed! Let us make a solemn pause then! The eyes of the world are upon us, the patriots and friends of America in Europe are now anxiously concerned, lest the whirlwind of tyranny should raze from its tender root the hallowed plant of Columbian liberty.

3.9.15 Before we confirm this new constitution let us ask ourselves this question. For what did we withdraw our allegiance from Great-Britain: Was it because the yoke of George the third was not sufficiently galling, that we cast it off, at the expence of so much blood and treasure, in order to accommodate ourselves with one of our own construction more intolerable: Or was it because the tyrant was three thousand miles off, that we revolted, in order to appoint one at home, who should correct us with scorpeons instead of whips? If this was your design, I congratulate you on your success: Hesitate not a moment then in the adoption of the new constitution: It is a perfect model, and answers your intentions completely: It certainly is capable of carrying *tyranny* and *despotism* to their ne plus ultra: No second revolution will be necessary: No further attempt need be made on this head; for this government will answer the end proposed to all intents and purposes.

3.9.16 Are these groundless conjectures, mere declamations unsupported by evidence, or affirmations without proof? No truly. Read the Old Whig, read the Centinels, read Brutus—Cincinnatus,[12] &c. and then say if you can, that these things are not real: perhaps better arguments were never advanced in the demonstration of any truth, than these writers have given to illustrate this matter; whilst the writers on the opposite side, have not been able to refute them in a single instance.

I shall close this essay with one observation, viz. that should this despotic scheme of government be overthrown, which God grant; To what cause then are we to attribute this glorious triumph? The answer is obvious; to that

palladium of liberty, that inestimable privilege of freemen, that scourge of tyranny, *the freedom of the press.*

Philadelphiensis, No. 2.

III

Joel, 2d and 15th [2:15–17]. "*Blow the trumpet in Zion, sanctify a fast, call a solemn assembly. Gather the people, sanctify the congregation, assemble the elders: Gather the children and those that suck the breasts; let the bridegroom go forth of his chamber, and the bride out of her closet. Let the priests, the ministers of the Lord, weep between the porch and the altar, and let them say, spare thy people O Lord, and give not thine heritage to reproach, that the heathen should rule over them.*"

My Fellow Citizens,

Are you disposed to hear plain arguments, simple truth, and pure facts? If you are, then let me tell you through the voice of reason, that the preservation of your little ones and yourselves, the love of mankind in general, and the liberty of your dear country, now demand your most serious attention. The peace, the freedom and the happiness of the present generation and possibly many succeeding ones, are the great subjects now under discussion. Was there ever then such an important time for America as this is; can there possibly be greater objects, than these are, presented to the human understanding? I say there cannot; and I affirm it, that there is not a man in the United States, except some base assassin or mean coward, who can be indifferent on this momentous occasion. Is there any one now among us who can remain unconcerned or neutral? If there be, I say he is not a *man;* no certainly he is unworthy of that character; such a wretch can have no claim to the title of a free citizen of America, he is a pitiful sycophant, a cringing spaniel, a menial slave. 3.9.17

The independence of America, with great propriety, was thought, during our late glorious struggle, an object of such immense value, that we could scarce pay too high a price for it; an object that even dignified human nature; and that thousands of our countrymen magnanimously and chearfully paid their blood for its purchase. But great as this was, I say that the adoption of the new constitution is an object of much greater concern. The parents of a child may rejoice at its birth, as a happy circumstance, but his conduct and character in manhood only can give them real and permanent pleasure; if these be bad, their pain is encreased by disappointment, the recollection of their former joyous hopes now augment their misery; yea, the misconduct of a son has frequently compelled his parents to curse the very day of his 3.9.18

nativity. In this relation, the independence of America and the new constitution exactly coincide. For if we adopt this plan of government in its present form, I say we shall have reason to curse the day that America became independent. Horrid thought! that the greatest blessing that God ever bestowed on a nation, should terminate in its misery and disgrace. Strange reverse this! that the freemen of America, *the favored of heaven*, should submit to a government so arbitrary in its embryo, that even a *bill of rights* cannot be obtained, to secure to the people their unalienable privilege.

3.9.19 It was a common saying among many sensible men in Great Britain and Ireland in the time of the war; that they doubted whether the great men of America, who had taken an active part in favor of independence, were influenced by pure patriotism; that it was not the love of their country they had so much at heart, as their own private interests; that a thirst after dominion and power, and not to protect the *oppressed* from the *oppressor*, was the great operative principle that induced these men to oppose Britain so strenuously. This seemingly illiberal sentiment was however generally denied by the well hearted and unsuspecting friends of American liberty in Europe, who could not suppose that men would engage in so noble a cause through such base motives. But alas! the truth of the sentiment is now indisputably confirmed; facts are stubborn things, and these set the matter beyond controversy. The new constitution, and the conduct of its despotic advocates shew that these men's doubts were really well founded. Unparelleled duplicity! that men should oppose tyranny under a pretence of patriotism, that they might themselves become the tyrants. How does such villainy disgrace human nature! Ah, my fellow citizens, you have been strangely deceived indeed; when the wealthy of your own country assisted you to expel the foreign tyrant, only with a view to substitute themselves in his stead.

3.9.20 But we want an efficient federal government; we want an efficient federal government: this is the constant theme of the day. Well, my friends, I grant this. But what is the ultimate end of an efficient government: in what should it be efficient? I hope you anticipate my answer. The only thing in which a government should be efficient, is to protect the *liberties*, *lives*, and *property* of the people governed, from foreign and domestic violence. This, and this only is, what every government should do effectually. For any government to do more than this, is impossible, and every one that falls short of it is defective. Let us now compare the new constitution with this legitimate definition of an efficient government, and we shall find that it has scarce a particle of an efficient government in its whole composition.

3.9.21 In the first place then, it does not protect the people in those liberties and privileges that all freemen should hold sacred;—*the liberty of conscience*, *the liberty of the press*, *the liberty of trial by jury*, *&c.* are all unprotected by this constitution. And in respect to protecting our *property*, it can have no

pretensions whatever to that; for the *taxes* must and will be so enormously oppressive, for supporting this expensive government, that the whole produce of our farms would not be sufficient to pay them.

As to this government being efficient, or rather sufficient to protect the people from the violence of a foreign enemy; the idea is so absurd that it offends common sense; it can neither have strength, energy, nor respectability, in the great scale of nations. For a new country to become strong and energetic, so as to be able to repel a foreign foe, the government must be *free* and *patriotic*, and the people must be *wealthy* and *well-affected* to it. Now if these requisites be wanting, that country is in jeopardy every moment, in fact it is on the direct road of falling a prey to the surrounding nations. In this miserable predicament then, must America stand, if we adopt the new constitution: for the government will neither be *free* nor *patriotic;* but on the contrary, *despotic* and *oppressive;* and the people will be *abject slaves*, toiling to support a government, which they curse in their hearts; a government composed only of an *emperor and a few lordlings*, surrounded by thousands of blood-suckers, and cringing sycophants. And in respect to the *standing army*, it will only be made up of profligate idle ruffians, whose prowess will chiefly consist in feats of cruelty exercised on their innocent fellow citizens; but in facing a foreign foe, they will prove themselves to be a body of mean cowards; like the Turkish Janissaries, better acquainted with plundering their country than fighting for its protection. In regard to a militia defending the country, the thing is still more absurd if possible: who in his senses could suppose that people, with their spirits broken by oppression, would voluntarily fight for that government, to which they are necessarily disaffected? No truly: common sense would point out to government that its safety could not be the object of the people arming; and hence it is plain that even were the militia willing to act, such a government would not trust them.—Lastly in respect to a navy, it is a matter of mere moonshine, such an expensive government as this would be, could not spare as much money in fifty years, as would build *three ships of the line*. This is a short portrait of the efficiency of our *efficient* federal government. What think you of it, my fellow citizens? 3.9.22

Philadelphiensis No. 3.

Mr. Oswald,

Russell, the printer of the Massachusetts Centinel, has attempted to answer a remark I make on his conduct in refusing to publish a piece signed Lucius in his paper:[13] Yet he allows that my observation was just; namely, "that it was not with the author of that piece that the freemen of Massachusetts had any thing to do, but with his reasonings." Now let him make 3.9.23

this his rule in future, and then his paper will be free and patriotic; let his conduct quadrate with the sentiment that he admits to be just, and I am perfectly satisfied: All I wished for, or intended, was to have our presses unshackled in respect to the new constitution, the liberty of America required, that they should be open to all parties, but influenced by none; and this impartiality was certainly better observed in Philadelphia, when I wrote, than at Boston, and therefore I made the remark, which I hope will have the desired effect: Indeed from his own concessions I have good reason to believe that my animadversions have been useful in setting the presses free in Boston; and this is as much as I wanted.

He is now obliged to let the scrap of Lucius appear, which probably would never have been the case, if I had not taken notice of the matter: But he has artfully given us no more than the thesis and smothered the rest; well this is still better than nothing.

Philadelphiensis.

December 5.

IV

I. Samuel, 8th and 18th [8:18]. *And ye shall cry out in that day, because of your* King *which ye shall have chosen you: And the Lord will not hear you in that day.*

My Fellow Citizens,

3.9.24 I do not write to inflame your minds, but to inform them: I do not write with a view to excite jealousies, and exhibit imaginary evils, but to promote your peace: I have no intentions of encouraging you to oppose or alter your present free government; but on the contrary, I advise you, yea, I entreat you, not to change it for one that is worse: If you cannot procure a better, why be doing [away?] with the old bad one. Except you are tired of freedom; except you are determined to entail slavery on yourselves and your posterity; for God's sake reject with that dignity becoming freemen, that tyrannical system of government, the new constitution. If you adopt it in toto, you will lose every thing dear to freemen, and receive nothing in return; but misery and disgrace.—Were some additional powers for regulating commerce, and the *impost duties* for a limited time, granted to the present Congress; this would probably answer all our purposes: But before Congress should be vested with greater powers than they now have, their number ought at least to be tripled,—suppose two hundred and sixty; that is, twenty members for each state. But this matter I shall leave for the

discussion of our next federal convention; if we should have the good luck to see their High Mightinesses once more *locked up in the State-house*, guarded by Captain M'Clain's Old Battle-Axe battalion.

3.9.25 Among the schemes and collusions that the friends of the new constitution have made use of to dupe the people into its adoption; that of making them believe that such a government would raise America to an eminent rank among the nations of the earth, seems to have been one of the most successful: There is not a writer that I have seen on the subject, that has called the truth of this matter into question; no wonder then that the less informed should be imposed on; when men of more enlightened understanding seem even to have swallowed the bait.

3.9.26 No people in the world have more of the genuine amor patriae than the citizens of the United States; that noble ambition, that laudable love for the dignity and character of his country, is so implanted in the breast of an American, that he is willing not only to contribute generously and largely of his property; but likewise to expend his blood to support that government that should establish the national respectability of his country.—This truly grand principle is so copiously infused into the hearts of our countrymen, that, I really believe, there is scarce an inconvenience to which they would not chearfully submit, provided this great point could be obtained. On this account then there are many who, although they are thoroughly persuaded that the new constitution is defective in many striking and material instances, yet through their national pride, would magnanimously overlook these, to have their country on a respectable footing as a nation. But ah my fellow citizens you are even disappointed here! It is a mere delusion! nothing but the basest deception; for, in the adoption of this constitution we will probably lose that small portion of national character which we now enjoy, instead of gaining an accession to it. What compensation then are you to receive in return for the liberties and privileges belonging to yourselves and posterity that you are now about to sacrifice at the altar of this *monster*, this *Colosus of despotism?* Why really the return you deserve, if you are mean enough to submit to be gulled after this manner; *poverty, slavery, and broken-heads.*—But, probably you will say, these are groundless conjectures; and we are perfectly convinced, that our new government, however it may be imperfect in some matters of an inferior nature, yet it must and will be *powerful;* yea a government that will make its enemies tremble. If you mean by its enemies the helpless widow, and orphan, the hard-working husbandman sunk down by labour and poverty: I grant it; but if you mean a foreign enemy; you insult your own understanding. No my friends; instead of becoming formidable, we will be the scorn and contempt of the whole world, during the existence of this contemptible government. Let us take but a rational view of its strength and respectability, and then we shall see that we have really nothing to depend on in this new constitution that

can raise the national character of America, but on the contrary, we will sink into a state of insignificance and misery.

3.9.27 The number of inhabitants in the United States is now probably about three millions and an half.—These are scattered over a continent twelve hundred miles long and eight hundred broad. Now to keep such an extensive country in subjection to one general government, a *standing army* by far too numerous for such a small number of people to maintain, must and will be garrisoned in every district through the whole.—And in case of immergency, the collecting of these scattered troops into one large body, to act against a foreign enemy, will be morally impossible. Besides they will have too much business on hand at their respective garrisons, *in awing the people*, to be spared for other purposes: There is no doubt, but to carry the arbitrary decrees of the federal judges into execution, and to protect the *tax gatherers* in collecting the revenue, will be ample employment for the military; indeed with all their strength and numbers, I am afraid, that they will find this a job of some difficulty, perhaps more than they will get through decently. Upon the whole, I think it is pretty obvious, that our *standing army* will have *other fish to fry* than fighting a foreign enemy; there is work enough cut out for them of a domestic nature, without troubling them on other occasions. Moreover such of them as might be brought into action, could not be depended on; for they will principally consist of the purgings of the European prisons, and low ruffians bred among ourselves that do not like to work.—And who could suppose that such vile characters as these, should be trusted to protect our country, our wives, our daughters, and our little ones? No my friends: God deliver us from such protectors.—Their *mean souls* wanting that amor patriae, that love of virtue, that noble love for the welfare and happiness of their fellow men, which animates the man of courage and constituted him the soldier; would fail them at the approach of an enemy. Yea they would either fly e're the battle commenced; or submit on the first charge; and probably turn their arms against the country that expected their protection. What I advance here, are truths founded on reason and the nature of things, and the experience of all ages affords ample examples for their illustration.

3.9.28 Very little need be said respecting the militia defending the country; perhaps what I have advanced in my last essay, is enough on that head: Indeed the thing itself carries its own evidence along with it: A person that has judgement sufficient to compare two ideas together, must see, that an *oppressed people*, reduced to a state of abject vassalage, by a despotic government, will never voluntarily venture their lives for it. When people are once slaves it is a matter of little concern to them who their masters are. The fable of the sensible ass is so pertinent to our purpose, that I cannot forbear reciting it. "An old fellow was feeding an ass in a fine green meadow, and being alarmed with the sudden approach of the enemy, was

impatient with the ass to put himself forward, and fly with all the speed he was able. The ass asked him, whether or no he thought the enemy would clap *two pair of panniers* upon his back? The man said, no, there was no fear of that. Why then, says the ass, I'll not stir an inch; for what is it to me who my master is, since I shall but carry my *panniers*, as usual."

3.9.29 There is not the most distant hope, that we ever shall have a navy under this constitution which annihilates the state governments; for, if each state were to retain its *sovereignty*, I am well convinced, that we might have a considerable *fleet* in a few years: The larger states might each build a ship of the line every year, and the lesser states would furnish us with frigates: A noble emulation among the states would be the consequence; one state would vie with another; and public spirited individuals would contribute generously to raise the character of their own state. But this consolidation of all the states into one general government, renders this project impossible; the federal government having an unlimited power in taxation, which no doubt, they will exercise to the utmost; leaves the states without the means of building even a *boat*. But had they money, they dare not use it for that purpose; for, Congress are to have an absolute power over the *standing army, navy and militia;* so that it is out of the question whether a particular state be, or be not, able to build a ship of war; she must meddle with no such matter; it only belongs to the Emperor and our well-born Congress to build and maintain a navy. Now if we give ourselves time to think but for a moment, we must be convinced in our minds, that Congress having a large national debt already accumulated, the Emperor, themselves, their judges, lawyers, revenue-collectors, dependants, flatterers, &c. &c. and above all the *standing army*, at least *double officered*, to provide for, will find themselves at their wits-end to devise *ways* and *means* for all these purposes. In short, the industry of three millions of people were it all applied to this use, would be little enough. Where then will the *navy* come from, where will Congress find money even to build and maintain cutters to prevent smuggling on the extensive coast of America? No where truly: Such a supposition is farsical indeed: And should the new constitution be established, a federal navy is a mere finesse, an absolute nonentity.

3.9.30 The Congress must procure money to pay the *standing army punctually*, come of other matters what will; their very existence depends on this. For a neglect of payment might, and really would, cause a mutiny in the military; and then down tumbles the federal constitution, whose *mighty basis* was said to be at the center of the earth: The standing army will be its grand supporters,—now if these give way, the building itself will be instantly levelled to the ground. And Heaven grant that Columbia may never see such another erected again on her domain. Amen.

Philadelphiensis, No. 4.

V

This is true liberty, when free born men
Having to advise the public may speak free;
Which he who can, and will, deserves high praise;
Who neither can, nor will, may hold his peace;—
What can be juster in a state than this?[14]

My Fellow Citizens,

3.9.31 If the arbitrary proceedings of the convention of Pennsylvania do not rouse your attention to the rights of yourselves and your children, there is nothing that I can say will do it. If the contempt and obloquy with which that body (whose legality even may be questioned) has treated your petitions, can not bring you to think seriously, what then will? When a few Demagogues despising every sense of order and decency, have rejected the petitions of the people, and in the most supercilious manner, triumphed over the freemen of America, as if they were their slaves, and they themselves their lords and masters. I say that if such barefaced presumption and arrogance, such tyrannical proceedings of the men, who, if acting constitutionally, were the servants of the people, be not sufficient to awaken you to a sense of your duty and interest, nothing less than the goad and the whip can succeed: your condition must be like that of the careless and insecure sinner, whom neither the admonitions nor entreaties of his friends, nor even the threatnings of awaiting justice, could reclaim or convince of his error; his reformation is neglected until it is too late, when he finds himself in a state of unutterable and endless woe.

3.9.32 It may be asserted with confidence, that besides the petitions that Mr. Whitehill presented to the convention from Cumberland county against the adoption of the new constitution, there is not a country [county?] or town in the state that should not have followed the example, if a reasonable time had been allowed for the petitions to come in. Now if we consider but for a moment how contemptuously the people were treated on this occasion, we may form some idea of the way in which they are hereafter to be governed by their *well born masters*. "The petitions being read from the chair. Mr. M'Kean said he was sorry that at this stage of the business so *improper* an attempt should be made; he hoped therefore that the petitions would not be *attended to*." (Pennsylvania Herald.)[15] Where is the freeman in America that can tamely suffer such an insult to his dignity to pass with impunity; where is that pusillanimous wretch who can submit to this contumely? Is not this the language of Britain, in the years 1775 and 1776, renewed. What said George the third and his pampered ministers, more than this, to the petitions of America? Is it improper for freemen to petition for their rights? If it be; then I say that the impropriety consisted only in their not *demanding* them.

Propriety requires that the people should approach their representatives with a becoming humility; but the governors of a free people must ever be considered as their servants, and are therefore bound to observe decency towards them, and to act according to their instructions and agreeably to conscience. If the petitions of the freemen of America, couched in decent and respectful terms, will not be attended to; then be it known, that their *demands* must and will be granted: If no better will do, the ultima ratio regum must secure to the people their rights. God in his providence has crowned them with success once already on this head; and there is little doubt, with the same assistance, but a second attempt will terminate just as much in favor of liberty.

3.9.33 The indignity offered to the people and their petitions, by the haughty lordlings of the convention, proclaims the chains of despotism already firmly riveted; like a herald it cries aloud, hush ye slaves, how dare you interrupt your *mighty rulers,* who alone have a divine right to establish constitutions and governments calculated to promote their own agrandizement and honor. Ah my friends, the days of a cruel Nero approach fast; the language of a monster, of a Caligula, could not be more imperious. I challenge the whole continent, the *well born and their parasites,* to show an instance of greater insolence than this, on the part of the British tyrant and his infernal junto, to the people of America, before our glorious revolution. My fellow citizens, this is an awful crisis; your situation is alarming indeed; yourselves and your petitions are despised and trampled under the feet of self-important nabobs; whose diabolical plots and secret machinations have been carried on since the revolution, with a view to destroy your liberties, and reduce you to a state of slavery and dependence: and alas! I fear they have found you off your guard, and taken you by surprise: there aspiring men having seized the government, and secured all power, as they suppose, to themselves, now openly browbeat you with their insolence, and assume majesty; and even treat you like menial servants, your representatives as so many conquered slaves, that, they intend to make pass under the yoke, as soon as leisure from their gluttony and rioting on the industry of the poor, shall permit them to attend such a pleasing piece of sport.

3.9.34 But I trust, these petty tyrants will soon find to their confussion, that their own imprudent zeal has defeated their designs. Providence has ordered, that they should begin to carry their arbitrary schemes too soo[n] into execution, that, their boundless ambition should precipitate their destruction, and that the glory of God should be made perfect in the salvation of the poor. Blessed be his name, "He hath shewed strength with his arm; he hath scattered the proud in the imagination of their hearts. He hath put down the mighty from their seat, and exalted them of low degree. He hath filled the hungry with good things, and the rich he hath sent empty away."[16] As a villain, who, secreted to rob and murder in the silent hour of night, issues forth from his

lurking place before the people have retired to sleep, and thus frustrates his infernal design by impatience; so in like manner the lust of dominion has urged these despots on to the adoption of measures that will inevitably, and, I hope, immediately unhinge every part of their conspiracy against the rights of their fellow-men, and bring on themselves infamy and disgrace.

3.9.35 Figure to yourselves, my brethren, a man with a plantation just sufficient to raise a competency for himself and his dear little children; but by reason of the immoderate revenue necessary to support the *emperor*, the illustrious *well born Congress, the standing army*, &c. &c. he necessarily fails in the payment of his *taxes;* then a hard-hearted federal officer seizes, and sells, his cows, his horses, and even the land itself must be disposed of to answer the demands of government: He pleads unfruitful seasons, his old age, and his numerous, and helpless family. But alas! these avail him nothing, his farm, his cattle, and his all are sold for less than half their value to his wealthy neighbour, already possessed of half the land in the county, to whom also himself and his children must become servants and slaves, or else perish with hunger and want. Do I exaggerate here? No truly. View the misery of the poor under the despotic governments of Europe and Asia, and then deny the truth of my position, if you can. It is a common saying among the poor of Indostan, that to lie is better than to stand, to sleep is better than to wake, but death is best of all; for it delivers them from the cruelty of their nabobs. Even in the freest country in Europe, a lady's lap-dog is more esteemed than the child of a poor man. O God, what a monster is man! that a dog should be nourished and pampered up by him with dainties; whilst a being, possessed of knowledge, reason, judgement, and an immortal soul, bought with no less a price than the blood of our divine Redeemer, should be driven from his door, without admitting him even for a moment to assuage his hunger with the crumbs that might fall from his table.

3.9.36 But the members of the Federal Convention were men who have been all tried in the field of action, say some; they have fought for American liberty: Then the more to their shame be it said; curse on the villain who protects virgin innocence only with a view that he may himself become the ravisher; so that if the assertion were true, it only turns to their disgrace; but as it happens it is not true, or at least only so in part: This was a scheme taken by the despots and their sycophants to bíass the public mind in favor of the constitution; for the convention was composed of a variety of characters; ambitious men[,] Jesuites, tories, lawyers, &c. formed the majority, whose similitude to each other, consisted only in their determination to lord it over their fellow citizens; like the rays that converging from every direction meet in a point, their sentiments and deliberations concentered in tyranny alone; they were unanimous in forming a government that should raise the fortunes and respectability of the *well born few*, and oppress the plebians.

Philadelphiensis, No. 5.

VI

Distress'd Columbia, must thou lie so low?
Must all thy conquests, glories, triumphs, spoils,
End in thine own disgrace?[17]

My Fellow-Citizens,

If America is to become a respectable nation, the people must retain their freedom in the fullest extent possible; this is the *sine qua non* of our respectability; on this alone must the strength, honor, and national character of this country depend. Indeed, any other system defeats the intention of the revolution; freedom was the ultimate object of the war with Britain, and must, from the nature of things, be the object as long as America remains an independent country. The Turkish empire was established by cruelty and dominion, by the swords of bigotted infidels, whose religion taught them to murder without remorse: probably then, that empire should have been extinct long ago, if the same system of despotism and cruelty had not been preserved; (although there are some authors who affirm that even in Turkey great and valuable privileges have always been enjoyed) but be that as it may, the case is widely different with us; nothing short of pure liberty is consistent with revolution principles; the *temple of freedom* that was raised in America, was intended by Providence to be the asylum of the poor and the oppressed of every nation and every clime. If then we prostitute this hallowed edifice, to purposes for which Providence never designed it, our ruin is inevitable. Our national independence will probably not survive the loss of our liberties a single day. As darkness brings the night, so despotism will obliterate the very name of the American empire. 3.9.37

It is a principle almost universally confirmed by the joint evidences of reason and experience, that that nation which is most free, is always most victorious; people who enjoy their civil and religious liberty, according to the true sense and meaning of the phrase, are laborious and brave. As the nature of a free government is to protect the lives, liberties, and property of the people, that each may enjoy what he hath by honest industry acquired; so it will be the temper and nature of that people, voluntarily to fight in defence of that government; for its interests and preservation is the same as their own. Hence, under a free constitution which secures the rights and privileges of the people, we will find courage, fortitude, and an unshaken loyalty to that government: but on the contrary, where despotism and tyranny prevail, the people are indolent and pusillanimous, backward to toil and fight in support of a government which their interest must lead them rather to see annihilated than preserved. If we take a view of ancient or modern history, we will find that freedom and superiority have ever gone hand in hand. The history of England affords us many striking instances to 3.9.38

illustrate this truth; the party that fought for the country, in civil broils, has always been victorious over the faction that endeavoured to enslave it. But why need I advance examples to prove a point, that the bare mentioning of the American revolution seems to put beyond controversy. If the history of the Turkish empire does not afford an exception to this principle, *that freedom and victory are inseparable*, there can be none found that I know of, without the conquest of the island of Corsica, by the French, be admitted as one; which certainly ought not, for it rather shows that freemen contending for their liberties are invincible.

3.9.39 Since it is obvious from what has been said, that the energy and national strength of America are concomitant with her freedom; it follows then that the adoption of the new constitution which ncessarily destroys the latter, must of consequence destroy the former: This constitution, in the first instance, will lop off above one half of our sacred rights and privileges, for which we bled and conquered; and the remainder are generally left insecure, and therefore must eventually be lost too; for the cursed lust of dominion can never be satisfied until it is in possession of all power, yea, it even then will be discontent, for it is insatiable. If America is to be *great* she must be *free;* freedom is her heart, her very life-blood; and the liberty of the press, like the great aorta, the prime artery, must convey it to the remotest parts of the extremities. That the adoption of this new constitution, in toto, will destroy the freedom of the press, and every other right and liberty that should adorn the freemen of America, has been proved in a clear and masterly manner by many patriotic writers, even before the dissent of the virtuous minority of the convention of Pennsylvania appeared;[18] but this gives the matter a finishing stroke: he who denies the evidence of their positions is either a designing villain, or one who insults his own reason, and declares himself incapable of judging right from wrong, or freedom from slavery, and consequently unworthy of enjoying American liberty.

3.9.40 The political alchymist, Dr. Rush, in his fulsome speech, that he has so assiduously published, patched, and re-published in all our newspapers, says, that our adoption of the new constitution will "produce paleness and distress at the court of St. James's."[19] From such a fallacious assertion, one would imagine that the Doctor must suppose the people of the United States are already as blind as he would wish to make them, if he thinks they will swallow this his bolus of deceit; such a declaration may probably work upon the prejudices of an American reader, but can never convince his reason. The assertion is false, take it in what sense you will; whether the Doctor meant that the adoption of this system of government will produce our *misery* or *prosperity*, he is equally wrong. That our establishing a despotic government possessed of every necessary power and qualification for annihilating the freedom of the people, and reducing them to the lowest state of slavery and wretchedness, should excite paleness and distress at the court of London is truly paradoxical; the sentiments of that nation must

have undergone a great change indeed; a greater change certainly than any man of common sense can credit. I know there are many good men of patriotic hearts and friends of American liberty in Britain, who will feel the most poignant grief when they hear of its adoption; but that these are of the court party, I can scarce believe: and I question much whether we should not doubt the sincerity of a positive and official declaration of the court, sympathizing with us in our sorrow. So that, upon the whole, I think it is pretty obvious, that the court of St. James's will not be much distressed at our misery. And that the British government should be distressed on account of our prosperity that must result to this country from our adoption of this system of government is a sophistical faslehood, that a grain of reason is sufficient to detect: Britain will never be distressed by reason of our prosperity under this constitution; for the truth of the matter is, we cannot *prosper* under it, but on the contrary, we will sink into misery and contempt; and probably cease to be an independent nation: This is a consequence that every politician will necessarily and quickly draw, and that the British, or any other government, must comprehend in an instant: Neither *energy, strength* nor *respectability* can exist a moment in America after the adoption of this tyrannical government.

3.9.41 There are several who have imagined that this government will for some time be a moderate aristocracy,[20] but end in a despotic monarchy; but this is a mistake; for it must commence in despotism: if ever it has a beginning. A large *standing army* will be absolutely necessary to set it in motion; I say a large standing army, for a small military force would only excite opposition in its enemies, and encourage them to attempt its destruction, by an appeal to arms. The impolitic conduct of Britain at the commencement of the American war, is a lesson for despotic governments in future; a decisive blow must be struck at once, otherwise liberty may triumph.

3.9.42 The advocates of the new constitution must be pretty well convinced by this time, that there are in every state a considerable number of people, perhaps one half of the whole, disaffected to it: now if nine states should really come into the measure, would it be prudent to compel the rest. I think not; although it is already whispered about, that if Virginia or any of the southern states should not adopt it, that force will certainly be applied; but this is Utopian altogether, nor can I conceive even if every state in the union should adopt it, how this *faction* can be crushed, and crushed it must be effectually, before this government is firmly established: I even doubt, whether all the military that the *well born* and their parasites can raise, will compleat this piece of business to their satisfaction. Has not America already shewn to the world that no power on earth can overcome a *phalanx of freemen* defending their sacred liberties?

3.9.43 Many patriotic writers wishing to compromise matters between the friends and enemies of the proposed government, have imagined that the difference might be amicably settled, if a declaration of rights were prefixed

to the constitution, so as to become a part of it; and therefore have recommended this to the parties as a necessary measure to reconcile them again to each other: But these good men did not consider that a declaration of rights would effectually annihilate the constitution; of this however, its advocates were well aware, and consequently could not consent to the amendment. No, no, the haughty lordlings and their sycophants must have no *limits* set to their power; they alone should rule; yes, and rule as they *list* too; why should any poor paltroon speak of rights? Why, to work as a slave for his *well born master*. Ah, my fellow citizens, this is a trying moment! an awful time indeed! Is it possible that the freemen of America should lose their liberties so soon? I hope not; and I trust, that the Lord, who is the friend of the poor and oppressed, will defeat the purposes, and confound the counsels of their haughty enemies; so that "they shall take them captives whose captives they were, and they shall rule over their oppressors."[21] *Amen*.

Philadelphiensis. No. 6.

VII

3.9.44 Common sense said, that, in case America became an independent nation, *neutrality* would be a safer convoy than a *man of war:*[22] Probably Mr. Paine thought so, when he wrote; but if he did he thought wrong: For the position ought to be reversed.—*A man of war* is a safer convoy than *neutrality;* or at least, without a naval convoy there is no safety in neutrality. If America is to be a commercial neutral power, she ought to have some naval strength to intitle her to the appellation. We all know that the *armed neutrality* of the northern European powers injured the trade of Britain more, during the late war, than the combined fleets of her open enemies. If a war should now commence between Britain and France or any of the nations who have possessions in America; can America remain a neutral *power*, or join in an armed neutrality for the protection of her commerce? No. Neutral she may be, and neutral she must be, and nothing else; and as for her being called a *power* it is a mere solecism, as long as she has no navy: Her trade may be destroyed with impunity; her seamen taken to man the fleets of her enemies, without the possibility of redress; and her government insulted and her cities laid in ashes by her enemies ships riding triumphant in her rivers and harbours, without being able to help herself, or retaliate.

3.9.45 But however necessary a fleet may be for the protection of our *seamen, commerce, and national honor*, it is pretty plain, that as long as the proposed government would exist, (if ever it should be established) we must do without one: That government must at least for some years be administered

by a standing army. Nothing short of despotism can reduce the disaffected part of the people to submit to it, who are the friends to liberty and the rights of human nature. Those who say that its enemies are a few insignificant individuals, talk something like the British ministry at the commencement of the war, who represented the American discontents, as a parcel of cowardly paltroons, whom they would soon bring to obedience, by a handful of military; but a short time convinced them of their mistake.

3.9.46 As the spirit of the new constitution admits of a standing army, and the opposition absolutely must be crushed by strength, every nerve of power must be strained, and every way and means of collecting money devised, for raising an *efficient army* for this purpose, in the first instance. This is a system of procedure that the despots must pursue, if they have any hopes of success. Either moderation or delay would effectually defeat them.

3.9.47 I question whether all the *hard money*, that the well born can procure at this juncture, will be sufficient to support their government and army for six months; without expending a single shilling on building a federal navy. The greater part of that junto are extremely poor; and have their hopes of agrandizement on the new government; now if a part of the people refuse to pay taxes to that government, as they certainly will, how will they provide for the national debt; how will these poor gentlemen make their fortunes; how will they pay their *standing army*, to whom they owe their existence; a few interogatives of this sort must shew clearly, that a single ship of war will never be built while this great government is in operation.

3.9.48 It is generally said, that the present distresses of America are in consequence of the want of the states delegating sufficient powers to congress: This is right in part, for the powers of congress were certainly too limitted to promote the general good of the union; but little power as that body had, they have not managed it well; indeed if they had had any more and the number of members so small, we would have had a tyrannical aristocracy established long ago; and the country involved in more misery. That body never attempted to build a navy; but, on the contrary, to complete our disgrace, sold the only ship of war we had, the Alliance frigate, for a mere song: They have found money however, to pay their *well born* ambassadors at the different European courts, and squandered away money on guilded swords, presents to Baron ____,[23] &c. &c. &c. and they have even had credit to negociate loans lately; but not a farthing could be spared to employ our poor mechanics to build a few frigates, by which a thousand honest families might have been saved from starving, and prevented from emigrating from the country, and our commerce and national respectability preserved. This is a specimen of the plan of our new system of government. When the present peddling and limited congress have taken such arbitrary steps, so diametrically opposite to the interest of the public good, what may we not expect from the friends of the new constitution? The poor working-

man is not to be thought of except his work will add to the character and dignity of the lordling nobility.

Philadelphiensis, No. 7.

VIII

This is true liberty; when freeborn men,
Having to advise the public, may speak free;
Which he who can, and will, deserves high praise,
Who neither can, nor will, may hold his peace—
What can be juster in a state than this?[24]

3.9.49 Hail, immortal genius!—hail, thou friend of freedom, and of thy fellow-men, whose patriotic pen first wrote this divine sentiment, "Let it be impressed upon your minds, let it be instilled into your children, that the liberty of the press is the palladium of all civil, political, and religious rights of freemen."[25] This is the scourge of tyrants, oppressors, villains, and blood-suckers; the bulwark of freedom, that causes the haughtiest lordling to tremble; an inestimable jewel, that places the poorest citizen on a level with the richest demagogue. In America the freedom of the press is peculiarly interesting: to a people scattered over such a vast continent, what means of information or redress have they, when a conspiracy has been formed against their sacred rights and privileges? None but the press. This is the herald that sounds the alarm, and rouses freemen to guard their liberty. From this scourge, the parricide, the knave of power and his cringing sycophants have every thing to fear; it hurls fury on the guilty heads of such base characters, and drags them to the public altar—And through the medium of the press, the *good and the patriotic* citizen receives the thanks of his grateful countrymen.

3.9.50 The sons of freedom who framed the constitution of Pennsylvania, expressly declared this to be one of the unalienable rights of the people, and therefore it ought not to be restrained. That some evils attend an unrestrained press, is obvious; but these are infinitely overbalanced by its advantages. The very salvation of America, I trust, will be wrought out by it; and the *conspirators* be taken by their own snares, which they so artfully set to seize the liberties of their fellow citizens, to their extreme mortification and disgrace.

3.9.51 In my first number, I took notice of some attempts, made by some of the *well born* or their parasites, to destroy the freedom of the press. A scheme was then proposed, that every writer, for or against the constitution, should leave his name with the printer, to be published if required. This plan was first set on foot in Boston, and adopted by some of the printers there; in

consequence of which, a gentleman under the signature of *A Pennsylvania Mechanic*, recommends a similar conduct to the printers of Philadelphia—And a few days after, another, under the signature of *Galba*, carries the system something higher; for he must have the villains only who wrote against the new government to leave their names for publication, while the *patriotic gentlemen* who wrote in favour of it, might walk at large.

Either through my reply, the terrors of a guilty conscience, or probably both, we heard no more of these press-fettering gentlemen until Monday last, when a writer in the Independent Gazetteer, under the signature of *One of the whigs of* 1776, comes forth with an improvement upon the original plan.[26] As he says "he has been bred a *mechanic*," I conceive he is the identical *Pennsylvania Mechanic*, who, we formerly observed, must be a blacksmith, employed in the service of the *well-born* to construct chains for confining to perpetual slavery the rest of his fellow-citizens. As his method of obtaining the names of the patriotic writers is tolerably clever, it deserves our particular notice. He says that he has left his name with the printer, and hopes the opposite writers will have no objections to do the same, to the end that he may have a private interview with them, and probably they may then make a convert of him. This is a pretty decent kind of a *trap* of the blacksmith's construction; but let him recollect the old proverb, *There is no catching old birds with chaff;* and then, I think, he will soon find that his *interviews and conversions* are rather visionary. 3.9.52

Tyrannical men are generally cunning, and hence they use deceitful arguments, with all the appearance of plausible equality. The author of a piece, say they, ought to give his name, for no man should write what he is ashamed to own. There is an appearance of candour in this argument, which renders it dangerous; but if we consider the thing more attentively, we shall find, that such a system would be subversive of truth and free enquiry, and eventually annihilate the freedom of the press. 3.9.53

When a political writer gives his name with his piece, he then shews where the opposite party may aim their shafts of malice, falshood, and scurrility, with certainty and success. Will a man, for his own sake—or if he has friends, family and endearing connections in life, still more for their sake; venture to expose his interest, his property, and perhaps his life, to the mercy of a revengeful, and probably a powerful party? He certainly will not, if he has common sense; and yet if he gives his name, this would necessarily be the consequence—All investigation of the subject would cease; the whole attention would be drawn off to another object; reason and argument must give place to personal invective and scurrility. When a person writes upon a national subject, he appeals to the public, who have nothing to do with the man himself, but with his sentiments: If his arguments and illustrations are well founded, they ought by all means to be published, as they tend to promote the general good; but if they are of a false or dangerous nature, let them be refuted. 3.9.54

3.9.55 The friends of the new constitution have used every method and device, that their power, their cunning, or their influence could have access to, in order to restrain the liberty of the press respecting that despotic scheme of government; but to their confusion be it remembered, that there were printers in Philadelphia beyond their influence or corruption: No city in the Union has afforded such illustrious instances of independence and patriotism among printers. While such a noble spirit exists among these men, there is little danger of the new government ever being established. The despots and their parasite are well aware, that if they could restrain the freedom of the press, all would be their own; hence they have pursued the object with unremitting zeal, and have in some measure succeeded. They have, I am told, by threats and by withdrawing subscriptions, stopt the publication of the debates of the Convention in the Pennsylvania Herald, and otherwise injured that paper so far, that the printer must cease publishing.[27] If such conduct as this be not sufficient to rouse the people of America to a sense of their duty, they must become the scorn of the whole world—a mere bye-word of contempt.

3.9.56 The advocates of this government say, that if nine states come into it, they will proceed to organize and put it in operation. They hug themselves up in the idea, that its enemies will cease their opposition and submit peaceably. How they came to make such a silly conclusion, is to me matter of surprise, as I never have observed the smallest change of sentiment among the patriotic gentlemen with whom I have conversed. From some of the writings of its friends, it seems probable, that this idea sprang from the circumstance of the Declaration of Independence. That measure was carried by a bare majority in some of the states, yet the minority gave way and joined cordially in it.—If there were any similarity between the circumstances of the Declaration of Independence and the adoption of the proposed Constitution, this argument would have some weight; but the premises are widely different, and consequently the inference inconclusive. The whole body of the people were determined to defend their liberties, at the hazard of their lives and fortunes, against the tyranny of the British government; so that there was a union of sentiment in respect of the great object, the only difference was in the means of obtaining it; in this case, then, common sense must have pointed out the expediency of the minority accommodating their private sentiments to those of the majority.

3.9.57 But the matter now in debate has no relation to that: the men opposed to the new constitution have the same cause to defend, that the people of America had during the period of a seven years war. Who is he so base, that will peaceably submit to a government that will eventually destroy his sacred *rights and privileges?* The liberty of conscience, the liberty of the press, the liberty of trial by jury, &c. must lie at the mercy of a few despots—an infernal junto, that are for changing our *free republican government* into a tyrannical and absolute monarchy. These are what roused the sons of

America to oppose Britain, and from the nature of things, they must have a similar effect now.

Philadelphiensis, No. 8.

IX

Instamus tamen immemores, cœcique furore,
Et monstrum infelix sacrata sistimus arce.

VIRG.

TRANSLATION.
Thus we, by madness blinded and o'ercome,
Lodge the dire monster *in the sacred dome.*[28]

My Fellow-Citizens,

Before *martial law* is declared to be the supreme law of the land, and your character of free citizens be changed to that of the subjects of a *military king*, which are necessary consequences of the adoption of the proposed constitution, let me admonish you in the name of *sacred liberty*, to make a solemn pause. Permit a freeman to address you, and to solicit your attention to a cause wherein yourselves and your posterity are concerned. The sun never shone upon a more important one: It is the cause of freedom—of a whole continent—of yourselves and of your fellow men. 3.9.58

Men who have so gloriously asserted the rights of human nature, and overcome tyranny, one ought reasonably to suppose could not have their spirits so much broken as peaceably to submit to it a few years afterwards. By the declaration of peace, wherein Britain acknowledged the independence and sovereignty of the United States, the people of America became citizens of the freest country under heaven. But under the proposed plan of government the least fragment of liberty cannot exist. 3.9.59

The writers against the proposed constitution are denominated, by the *aristocratics, incendiaries,* and enemies to America, men whose writings tend to involve this devoted country in anarchy, and in all the horrors of a civil war. Now, in reply to this charge; let me ask the friends of this government, is that man an *incendiary* who advocates the unalienable rights of the people? Is he an enemy to America who endeavors to protect the *oppressed* from the *oppressor;* who opposes a conspiracy against the liberties of his country, concerted by a few *tyrants,* whose views are to lord it over the rest of their fellow citizens, to trample the poorer part of the people under their feet, that they may be rendered their servants and slaves? If such a writer is an incendiary, and an enemy to America, then I glory in the character. A conspiracy against the freedom of America, both deep and dangerous, has 3.9.60

been formed by an infernal junto of demagogues. Our thirteen free commonwealths are to be consolidated into one *despotic monarchy*. Is not this a position obvious? Its evidence is intuitive; and the address and dissent of the minority of the convention of Pennsylvania add such strength to its illustration, that no man of common sense can refuse his assent.[29] But why need I attempt to prove a point, that that honest man and firm patriot, Mr. MARTIN, says the monarchy men of the federal convention declared was their intention.[30]

3.9.61 Who can deny but the *president general* will be a *king* to all intents and purposes, and one of the most dangerous kind too; a king elected to command a standing army? Thus our laws are to be administered by this *tyrant;* for the whole, or at least the most important part of the executive department is put in his hands.

3.9.62 A quorum of 65 representatives, and of 26 senators, with a *king* at their head, are to possess powers, that extend to the *lives*, the *liberties*, and *property* of every citizen of America. This novel system of government, were it possible to establish it, would be a compound of *monarchy* and *aristocracy*, the most accursed that ever the world witnessed. About 50 (these being a quorum) of the *well born*, and a *military king*, with a *standing army* devoted to his will, are to have an uncontrouled power over our lives, our liberties, and property, in all cases whatsoever. Is he an incendiary who abhors the thought of such a government, who declares it his opinion, that none but a sycophant or a slave could submit to it? I think not; and there is no power under heaven that could cause me to change my opinion; which has the joint evidences of reason and experience for its foundation.

3.9.63 There is not a tincture of democracy in the proposed constitution, except the nominal elections of the president general and the illustrious Congress be supposed to have some colour of that nature; but this is a mere deception, invented to gull the people into its adoption. Its framers were well aware that some appearance of election ought to be observed, especially in regard to the first Congress; for without such an appearance there was not the smallest probability of their having it organized and set in operation. But let the wheels of this government be once cleverly set in motion, and I'll answer for it, that the people shall not be much troubled with future elections, especially in choosing their *king*, the *standing army* will do that business for them.

3.9.64 The thoughts of a military officer possessing such powers, as the proposed constitution vests in the president general, are sufficient to excite in the mind of a freeman the most alarming apprehensions; and ought to rouse him to oppose it at *all events*. Every freeman of America ought to hold up this idea to himself, *that he has no superior but God and the laws*. But this tyrant will be so much his superior, that he can at any time he thinks proper, order him out in the militia to exercise, and to march when and where he pleases. His officers can wantonly inflict the most disgraceful punishment

on a peaceable citizen, under pretence of disobedience, or the smallest neglect of militia duty.

Among the substantial objections to the great powers of the president, 3.9.65
that of his *negative* upon the laws, is one of the most inconsiderable, indeed it is more a sound than any thing else; For, if he be a bold enterprising fellow, there is little fear of his ever having to exercise it. The two branches of the legislature, will be at his service; no law contrary to his sentiments, however salutary in its operation, dare be mentioned by them. As a body, and as individuals, they will be his sycophants and flatterers. But, if on the contrary he should not be a man of spirit, a thing very improbable, as none but an ambitious man, well versed in the ways of men, could have the address to be raised to that elevated station; if, however, I say, he should not be a man of an enterprising spirit, in that case he will be a *minion* of the aristocratics, doing according to their will and pleasure, and confirming every law they may think proper to make, without any regard to their public utility.

Every idea of such unlimited powers being lodged in so small a number of 3.9.66
the *well born*, elevated so far above the rest of their fellow citizens, and supported by a *king* with a *standing army* at his disposal, ought to cause the blood of a free citizen to boil with indignation: the very mentioning of it shocks my whole frame. I abhor the thought from my soul: And I flatter myself that the people of this continent will not suffer such a government to be placed over them. Indeed it astonishes me, that the conspirators who framed it, had not the most dreadful apprehensions of their personal safety, from the just resentment of the freemen of an insulted country.

To such lengths have these bold conspirators carried their scheme of 3.9.67
despotism, that your most sacred rights and privileges are surrendered at discretion. When government thinks proper, under the pretence of writing a libel, &c. it may imprison, inflict the most cruel and unusual punishment, seize property, carry on prosecutions, &c. and the unfortunate citizen has no *magna charta*, no *bill of rights*, to protect him; nay, the prosecution may be carried on in such a manner that even a *jury* will not be allowed him. Where is that *base slave* who would not appeal to the *ultima ratio*, before he submits to this government?

If the despots persist in pushing it on, let them answer the consequences; 3.9.68
they may fall a sacrifice to their own obstinacy; for liberty will triumph over every obstacle, even were a *standing army* opposed to it.

To preserve the peace of the country, every patriot should exert himself at this awful crisis, and use his influence to have another federal convention called as soon as possible; either to amend the old articles of confederation, or to frame a constitution on revolution principles, that may secure the freedom of America to the remotest time.

If the State of Massachusetts should reject the proposed constitution, of 3.9.69
which there is a strong probability, what a contemptible figure must its

advocates make, who, after it made its appearance from the *dark conclave*, affirmed that there was but *five men* opposed to it in the United States.[31] The convention of that state was chosen in the moment of blind enthusiasm, and yet we find it so much divided that the issue is doubtful. The sentiments of the people are changing every day, and were that convention to be elected now, I doubt not but four fifths would be against it. In the back counties of Pennsylvania, where the *well born* have no influence, the opposition is said to have become so powerful that a person would be in danger of losing his life, if he ventured to speak a word in its favor.

3.9.70 The conspirators saw clearly, that such a system of government could never be established over freemen, except they were taken by surprize; and hence they hurried matters forward with that view; in short, the people were made to believe, that they were all *dead men*, if they did not adopt it immediately. Even still they are endeavoring to hold up the idea of anarchy being the consequence of rejection: But he must have very weak intellects indeed, and [be] little acquainted with the spirit of freemen, to whom it is not obvious that adoption will produce anarchy and ruin.

3.9.71 No evil can result from calling another general convention, but much good would be the consequence. The distresses of America are not of that nature to be healed all of a sudden; some of them indeed have arisen from the defects in the general government; but there are others of a different kind, that must be removed by time, and by the prudence of the people at large.

3.9.72 Ye patriots! ye lovers of peace, of liberty, and of your fellow men! Ye are called upon at this solemn juncture, to stand forth and save your country; before the breach is too wide, and while the parties may still be reconciled to each other; before anarchy stalks through the land; and before the sword of civil discord is unsheathed. For the sake of every thing that is great and good, and as you shall answer for it at the great tribunal, use your influence to procure another general convention with all possible speed, as the only way left to preserve the union of America, and to save your fellow citizens from misery and destruction.

Philadelphiensis. (No. IX.)

X

My Fellow-Citizens,

3.9.73 If stupid irony, falsehood, scurrility, and abusive language, be sufficient to silence a writer in the cause of freedom, my sentiments must have been suppressed long ago; but that old saying, that *nothing cuts like the truth*, has

encouraged me to address you once more. Probably this essay may be more obnoxious to the friends of the proposed plan of government than any of my former publications; and if so, the above saying is farther confirmed. A freeman must have a *little soul* indeed, whose attention can be diverted from its proper object, by the schemes practised by the friends of unlimited dominion. His own happiness, as being connected with the happiness of his fellow-men, ought to be his chiefest good. The *divine founder* of our religion and his beatified followers had no aim but this, and they pursued it with a zeal consistent with its excellence.

3.9.74 If the proposed plan be a good one upon the whole, why should its friends endeavour to prevent investigating its merits or defects? Why should they hurry it on us before we have even read it? Does not this look suspicious like? Is it not a proof that it is the works of darkness, and cannot bear the light? Why should they summon a Convention in Pennsylvania, before the tenth part of the people had time to judge for themselves, or to know whether it was a free or a tyrannical system of government? Why employ bullies to drag some members of the Assembly per force to the House to make a quorum, in order to call a Convention?[32] The answers of these interrogatives are obvious, and the conclusions deduced from them will in time have their proper effect.

3.9.75 The principles of its framers are now clearly understood; the proceedings of the *dark conclave* have undergone an *ordeal* in Maryland, that exhibits the monarchy-men in convention as a set of the basest conspirators that ever disgraced a free country.[33] At the time that these men were plotting the ruin of their country, and forming a system of national cruelty unequalled in the annals of time, the unsuspecting freemen of America were blessing them, were praying for them in their private families, and in their public churches, and looking up to them for relief; they even called the federal convention an *august body, the most excellent assembly of men that ever appeared in the world.*

3.9.76 The *President-general,* who is to be our *king* after this government is established, is vested with powers exceeding those of the most *despotic monarch* we know of in modern times. What a handsome return have these men made to the people of America for their confidence! Through the misconduct of these bold conspirators we have lost the most glorious opportunity that any country ever had to establish a free system of government. America under one purely democratical, would be rendered the happiest and most powerful nation in the universe; but under the proposed one, composed of an *elective king* and a standing army, officered by his sycophants, the starvelings of the Cincinnati, and an aristocratical Congress of the *well-born,* an iota of happiness, freedom or national strength cannot exist. What a pitiful figure will these ungrateful men make in history; who, for the hopes of obtaining some lucrative employment, or of receiving a little

more homage from the rest of their fellow creatures, framed a system of oppression that must involve in its consequences the misery of their own offspring? There is but one rational way remaining to prevent themselves from being eye witnesses of a dreadful scene, and that is for them to cease immediately every operation that respects the establishing of this plan of government; and then all parties will join heartily in calling another federal convention, and the peace of the country will be preserved.

3.9.77 One of the members of the virtuous minority of the convention of Massachusetts openly declared in that assembly, that pushing on this accursed system would produce a *civil war:*[34] the freemen of New-England, the best soldiers on the continent, have had their eyes opened, and begin to see through the conspiracy; that sacred palladium of liberty, *the freedom of the press*, has dispelled the cloud, and cleared their understandings. In that state, through the influence of the tyrants of Boston, very little information has reached the people; the *press*, generally speaking, was devoted to the *well-born* and their tools; yet out of near 400 members, of which that convention consisted, only a majority of 19 could be procured, notwithstanding every possible method of overawing, threatening and *bribing* was practised.

3.9.78 I conceive that carrying it by so small a majority, is little better than a rejection; in fact it may prove worse, for the breach is only widened so much the more by it, and truly it was wide enough before. The freemen of Massachusetts will never cowardly surrender their sacred rights and liberties into the hands of one man, or any body of men whatever. They know what freedom is, and they will support it at the risque of their lives and fortunes. Their courage, fortitude, and achievements in the late war have rendered their character, as friends to liberty, immortal.

3.9.79 The amendments proposed by the president will be another source of mischief; the people cannot be so ignorant as to be deceived by so pitiful a manoeuvre. Here is a positive acknowledgement made by one of its advocates, who hopes to be appointed the *little king* if not the *big one*, that it is objectionable; and his amendments are introduced as a blind; the weighty ones are untouched: not a whimper of the extraordinary powers of the *President-general*, the *standing army*, the *liberty of the press*, *&c*. No, no! if these *glorious parts* be lopped off, what would become of the monarchymen? And respecting *internal taxation*, is not his amendment a disgrace to himself, and an insult to the understanding of the people? Mr. Hancock knows, or ought to know at least, that the liberties of the citizens of America are not to be trifled with: his schemes are too flimsey not to be seen through.

3.9.80 The allegiance of freemen to government will ever be a consequence of protection; the Congress of America withdrew their allegiance from the king of Great Britain when he changed his protection into acts of cruelty; and on the same account the citizens of these United States will not chearfully bear allegiance to the new government; which, instead of protecting them in their

sacred rights and privileges, will be a system of tyranny and oppression. The unlimited powers of the new Congress in respect to taxation, are abundantly sufficient to alarm the people. While the state assemblies retained the right of *internal taxation*, the country farmers could not be burdened beyond their abilities; these men being the true representatives of the people, would never attempt to levy an oppressive tax; their own feelings and interests being congenial with those of their constituents, their consent must be withheld when a measure was proposed subversive of public good.

That the new Congress will not be the immediate representatives of the people, that their number is too small, their powers too great, their accountability to the people not properly secured, and above all the *executive* dangerously placed in the hands of one man, who is really a *king*, have been fully illustrated by many able writers, and ably proved in the conventions of this state and Massachusetts by worthy patriots whose names will be revered as long as time shall remain. Upon the whole, my fellow citizens, if the great characters, who are said to advocate this system of government, wish to act consistently, the greatest proof they can give of their love for their country, is to join the rest of their fellow citizens in endeavouring to call another federal convention. 3.9.81

Philadelphiensis, No. X.

XI

My Fellow Citizens,

Every day opens a new scene of the baseness of the conspirators, their intentions of screening themselves from rendering an account of the public money so fraudulently detained, will rank them among the meanest traitors, that ever dishonoured the human character.[35] How must their consciences condemn them, when avarice and lust of dominion are suffered for a moment to subside, and reason and reflection take their place? Let these men but cooly consider the misery that must inevitably befal millions of their countrymen, in consequence of their treachery in framing this system of fraud and oppression; and remorse and deep anguish of soul must await them! Humanity brings a tear of sympathetic pity from the eye of their fellow men, whose ruin they had secretly projected. As our holy religion expressly enjoins it as a duty, not to return evil for evil, but to overcome evil with good; consequently our resentment against these ungrateful men should be moderated by christian charity: Yet as freemen and citizens, determined to hand down to posterity sacred liberty unimpaired, we are 3.9.82

solemnly bound, at the hazard of our fortunes and lives, to oppose this base attempt of theirs to enslave our country.

3.9.83 If on the broad basis of equity and justice, crimes and punishments have their proper proportion: What punishment then, on the scale of moderation, could counterpoise, or atone, for a crime so aggravated as that charged to the majority of the members of the late federal convention? I assert roundly, that another assembly of men never met in this, or any other country, possessing so fully the confidence of so many freemen: and to their shame be it said, they abused this confidence; their own private interest, private emolument, and hopes of dominion, overcame every consideration of duty, honor, and gratitude.

3.9.84 The citizens of Pennsylvania have nobly shown their love for liberty, and attachment to the true interests of the union, by their generous exertions in favor of public credit. They have rigidly fulfilled their engagements in regard to the general debt; the requisitions of Congress have been strictly attended to, and fully answered. Add to this, that we have sunk a considerable part of the domestic debt, and in fact assumed a larger portion of it than in justice belonged to us. These spirited exertions, while they contributed to the general welfare of the union, and raised the reputation of the state, did not fail however to distress our farmers and every other class and description of citizens, very sensibly indeed.

3.9.85 But what is the result of their unshaken loyalty to the cause of liberty, and the honor of their country? What recompence will the honest and industrious Pennsylvanians receive for their patriotism, if the new government be established? Such a return as perhaps history does not afford a single instance similar to. So base a violation of public justice and plighted faith, is certainly a novelty in politics, and begins a new epoch in history. Pennsylvania, instead of receiving credit for the immense sums she has paid into the general treasury, will be placed on a footing with the most delinquent state in the union; and which is highly probable she and all the other states will be taxed hereafter in an exact ratio of the sums they have hitherto raised. Consequently our former acts of generosity, in support of public faith, is to terminate in a two-fold loss to our citizens. In the first place we have nearly ruined ourselves already, through our punctuality in paying our quota of the public debt; and secondly, to complete the scene, our future quotas of continental revenue will be apportioned to the exertions we have heretofore made: That is in plain terms, Pennsylvania will be much worse under this cruel system of tyranny in consequence of her fidelity and honor, than she would have been had she never attempted to pay a shilling of public debt; or if she be not worse, the uniformity of internal taxation through the union, which is expressly stipulated by the constitution, necessarily places her citizens on a parallel with those of that state which has not paid a shilling of public debt since the peace.

The people of the delinquent states might inconsiderately be induced to triumph in the new system of government; for they may conclude, now our public debts are paid as far forward as those of any other state, but attentive consideration will soon convince them of their mistake. Although the new constitution advances them as high in the public scale as if they had strictly and honorably made good the requisitions of the old Congress: yet the unbounded powers of the new Congress in respect to internal taxation, must eventually fleece them of their all; and from their inability heretofore to pay their just quotas as levied by Congress, we may rationally conclude, that, even the states of Pennsylvania and New-York, which are in advance at present, will still be above them, supposing the extra payments of these two states not to be carried to the credit of their account, which they certainly will not, on the principles of this constitution. 3.9.86

The truth of this matter is simply this; the taxes will hereafter be uniform in all the states, and as oppressive as tyranny can make them. In every state the face of the poor must be ground to dust; and where any appearance of prosperity or wealth is observed, an additional tax will be devised; for so complicated and uncontrouled a government, will find ways and means to apply all the revenue that America can raise; indeed the whole produce of the lands cultivated by three millions and an half of people, could not satiate the desires of such a government. If the *lesser*, or rather *weaker* states would moderate their precipitancy, in urging forward the constitution, by reason and the certainty of misery that stares them in the face, I imagine they would find their advantage in the measure. Lenity in the old Congress has in some degree screened them; and besides their fellow citizens in the other states befriend them; but the high hand of power, so completely vested in the new Congress, will exact the uttermost farthing, both from the states and individuals: No excuse will satisfy the demands of a cruel *excise-man;* we must instantly pay the federal tax, or have our property seized, and ourselves dragged to prison by a federal soldier. 3.9.87

That this government, should it be ratified by nine states, will not possess the confidence of the majority of the people, is a truth incontrovertible. I admit, that through fraud and surprise, many have inconsiderately joined themselves to its deceptive standard; but their number is diminishing rapidly; and I sincerely believe, that in a few months the *office-hunters*, the *well born*, and their sycophants, will be left alone: The farmer, the mechanic, and even the merchant, would be ruined if it took effect; their interest is to oppose it, and to endeavor to have another convention called immediately. 3.9.88

Who is so dimsighted as to suppose that a constitution so essentially differing from the principles of the revolution, and from freedom, and opposed by so respectable a body of freemen, could be established in America; or if it were possible by force or surprise to put it in motion, could it exist 3.9.89

any space of time? Nay, the idea is futile, and common sense spurns at it. While it would exist, it must be by the power of a standing army alone; but its warmest advocates know, that all their credit, and influence could not support a standing army, equal to the business, six months.

3.9.90 It is admitted, that in Great Britain they are scarce ever without violent factions and parties, and yet no injury is apprehended to the country on that account, but generally much good: But let us attend to this matter seriously, and we must see clearly that factions and parties in America in respect to the present important object, would eventually ruin this country. The parties, factions, and cabals, so frequent in Britain, are not from a dislike to the fundamentals of their constitution, but on account of mal-administration: All parties glory in the constitution, and disagree only, when it is infringed, or violated.

3.9.91 To infer then, from the example of Britain, that the opposition to the new government would not terminate in our ruin, if it were adopted by a majority in nine states, would be a dangerous mistake; for there is no analogy between the premises, the conclusions are therefore different. The opposition in America is against the fundamentals of the constitution itself; but this is not so in England. No constitution that is not popular can possibly be established in America; or if for a short time it were established, we would have nothing but anarchy and civil war, while it was in existence.

3.9.92 Let us not be deceived by delusive tales, that it shall be amended after the meeting of the first Congress; since it is admitted almost universally that it wants amendments; now is the time to have them done, while we are at peace abroad, and among ourselves. A fragment of liberty cannot remain, if we once set it in motion in its imperfect state. How can we suppose, that the president general, being once in full possession of his unlimited powers, would deliver them back again to the people; the supposition is preposterous; he must be more than *man* if he would; a more dangerous king is not in the world than he will be; liberty will be lost in America the day on which he is proclaimed, and must be recovered by the *sword*, if ever we are to enjoy it again.

Philadelphiensis, (No. XI.)

XII

My Fellow Citizens,

3.9.93 The essays under the signature of Philadelphiensis are represented as without argument, and their prime object is said to be to involve this devoted country in a civil war.[36] But *time*, the discoverer of future events, will

certainly shew that the calling another Federal Convention is the only rational way to prevent it. Heaven grant that these eyes may never behold that dreadful scene. The writer of these essays was actuated by the purest motives, namely, to defend the liberty and advance the happiness of his fellow-citizens. These he conceived insecure, or rather destroyed, if the proposed constitution should be established, and hence he labored to procure another Convention. The expediency of this measure was demonstrated by illustrating the principal defects in the proposed system;—defects did I say—the expression is too soft—the ruin that must follow its adoption.

If pointing out the unlimited powers of the new Congress over the lives and property of their fellow citizens, which may and certainly would be abused, be not an argument against it, there remains no fixed determinate idea to be annexed to the term argument; indeed, on such principles right and wrong, freedom and slavery have no essential difference, and the human mind is a mere chaos. 3.9.94

Some feeble attempts have been made by the advocates of this system of tyranny, to answer the objections made to the smallness of the number of representatives and senators, and the improper powers delegated to them; but, as far as I recollect, no one has been found bold enough to stand forth in defence of that dangerous and uncontrouled officer, the *President General*, or more properly, our new KING. 3.9.95

A few pieces under the signature of *An American Citizen* were published immediately after the Constitution broke the shell, and the hydra made its way from the *dark conclave* into the open light; in the first number of which the writer, in touching on the *President*, endeavored to conceal his immense powers, by representing the King of Great-Britain as possessed of many hereditary prerogatives, rights and powers that he was not possessed of; that is, he shews what he is not, but neglects to shew what he really is; but so flimsey a palliative could scarcely escape the censure of the most ignorant advocate for such an officer; and since we hear of no further attempts to prove the necessity of a King being set over the freemen of America.[37] 3.9.96

The writer of these essays has clearly proven, that the president is a King to all intents and purposes, and at the same time one of the most dangerous kind too—an *elective King*, the commander in chief of a standing army, &c. and to these add, that he has a negative over the proceedings of both branches of the legislature: and to complete his uncontrouled sway, he is neither restrained nor assisted by a *privy council*, which is a novelty in government. I challenge the politicians of the whole continent to find in any period of history a monarch more absolute. 3.9.97

Who is so base as not to burn with resentment against the conspirators, who have dared to establish such a tyrant over his life, his liberty and property? Is the flame of sacred liberty so entirely extinguished in the American breast as not to be kindled again? No; you mistaken despots, do 3.9.98

not let such a preposterous thought madden you into perseverance, lest your persons fall sacrifices to the resentment of an injured country. Stop at once, and join the rest of your fellow citizens. Let another Convention be immediately called, and let a system of government fitted to the pure principles of the Revolution, be framed. Then a general amnesty among all ranks and degrees of your fellow citizens must succeed, and America become the seat of liberty, peace, friendship and happiness; and her government have ample *energy* and *respectability* among the nations of the earth; yea, she will thereby be rendered the great arbiter of the world.

Philadelphiensis, No. XII.

1. A Pennsylvania Mechanic's reasons for this proposal appear in the portion of his brief essay just preceding that quoted by Philadelphiensis:

"The friends of the new system are not ashamed to show their principles, and their writings, on the subject, while its enemies take every prudent measure to prevent detection.

"I know a gentleman in this city, high in office, who has written much against the new system, not withstanding he has never, in company, uttered a syllable against it. Hence I conclude that the small anti-federal junto are conscious of the wickedness of their proceedings—that their cause is that of the devil—and of it they are truly ashamed. It appears by a late eastern paper . . .[etc.]." For a similar controversy, see [Maryland]Farmer I, 5.1.1 n. 2.

2. The *Independent Gazetteer* reads "right in part," but the *Freeman's Journal* version, given here, is correct. With this correction Galba's statement is given accurately and in full.

3. The *Independent Gazetteer* reads "and that," but the *Freeman's Journal* version, given here, is doubtless correct.

4. For Russell's partial retraction, see IV, 3.9.23. For defenses of the policy of requiring that names be given, see Amen, *Massachusetts Centinel* 13 October 1787, and One of the People, ibid. 17 October 1787.

5. This whole matter is resumed in essay VIII, 3.9.51–55, but the arguments are substantially the same as here.

6. See above, 2.7, 3.3. The first two letters of Centinel and the first five of the Old Whig had been published at this time.

7. Following the *Freeman's Journal* version. The other possibility is of course "carping," but it is unlikely that both printers would have missed the word.

8. The *Independent Gazetteer* version ends here; the paragraph that follows appeared only in the *Freeman's Journal*.

9. Eleazer Oswald was the publisher of the *Independent Gazetteer, or Chronicle of Freedom*.

10. Ephesians 6:13–16.

11. See Centinel III, 2.7.76 n. 39.

12. See above, 2.7, 2.9, 3.3, and below, 6.1.

13. See I, 3.9.4.

14. Euripides, *The Suppliants,* translated by John Milton, who used it as a preface to his *Areopagitica*.

15. McMaster and Stone 420–21. Philadelphiensis omits McKean's argument that "the duty of the Convention was circumscribed to the adoption or rejection of the proposed plan, and such had certainly been the sense of the members, when it was agreed that only one question could be taken on the important subject before us."

16. Luke 1:51–53.

17. Adaptation of Shakespeare's *Julius Caesar* act 3, sc. 1. Anthony: "O mighty

Caesar! dost thou lie so low? Are all thy conquests, glories, triumphs, spoils, shrunk to this little measure?"

18. See below, 3.11.

19. The reference is presumably to Rush's final speech before the Pennsylvania ratifying convention, of which only a brief report survives, and the numerous newspaper essays that he wrote under various pseudonyms, few of which can now be traced. None of the identifiable Rush materials contain the quotation attributed to him here. See *The Autobiography of Benjamin Rush*, ed. George W. Corner (Princeton 1948) 160–61; *Letters of Benjamin Rush*, ed. L. H. Butterfield (Princeton 1951), 2 vols., passim; Harry G. Good, *Benjamin Rush and His Services to American Education* (Berne, Ind., 1918) 70–71.

20. This is George Mason's widely distributed view; see 2.2.15.

21. Isaiah 14:2.

22. Thomas Paine, *Common Sense*, "Thoughts on the Present State of American Affairs."

23. The reference is to the Baron von Steuben, Inspector General of the American Army, who was presented with a gold-hilted sword by Congress in 1784. John McAuley Palmer, *General von Steuben* (New Haven 1937) 327, 344.

24. See above, n. 14.

25. "Dedication to the English Nation," *Letters of Junius* (Bohn Library ed.) I, 88. Junius calls the liberty of the press the palladium "of all the civil, political, and civil rights of *an Englishman* . . ."

26. The *Independent Gazetteer* 21 January 1788. This was part of an exchange of slight pieces between "One of the Whigs of 1788" and "One of the Whigs of 1776" (18 January, 19 January, 25 January), and quite possibly did have the aims ascribed to it by Philadelphiensis.

27. McMaster and Stone 15.

28. *Aeniad* II, lines 244–45.

29. See below, 3.11; Plebeian 6.11.15 n. 9.

30. See above, Martin 2.4.24.

31. The reference is probably to Mr. Daniel Clymer's observation in the Pennsylvania legislature that "only four or five leading party-men in this city are against it." McMaster and Stone 30.

32. See above, Pennsylvania House Minority 3.2.3.

33. Luther Martin describes the persistence with which the advocates of the party wishing a President holding office during good behavior pressed for reeligibility. See above, 2.4.81–82. Philadelphiensis may be referring more particularly to Martin's charge that more than twenty members of the Convention favored monarchy. The claim was based on a list drawn up by John Mercer, who, however, claimed that the list contained the names of nationalists, not monarchists. See letter of David Carroll to James Madison, 28 May 1788, Farrand III, 305–6.

34. The reference may be to a remark made by William Symmes. See below, 4.5.13.

35. Centinel charged that the ex post facto clause was intended to free public creditors of their obligations and discussed the affairs of Robert Morris and Thomas Mifflin in his sixteenth and seventeenth essays (2.7.167–77). A repetition of the charge by an anonymous writer in the *Freeman's Journal* (5 March 1788) gave rise to replies by Morris and Mifflin, which are printed in McMaster and Stone 786–89.

36. A Real Patriot, *Independent Gazetteer* 28 January 1788, McMaster and Stone 524–25.

37. [Tench Coxe] An American Citizen, "An Examination of the Constitution for the United States of America," Ford, *Pamphlets* 137–39. Philadelphiensis evidently had not seen the essays of *The Federalist* on the presidency (nos. 67–77), which had been published only a month before. For other Federalist comparisons of the President and the English king or kings generally see Ford, *Pamphlets* 35 (An American Citizen), 211–12 (Fabius), 232–35 (Aristides), 351 (Marcus); Ford, *Essays* 38 (Cassius); Elliot IV, 74, 107–9 (Iredell). For Anti-Federal comparisons see Martin 2.4.86; Cato IV, 2.6.31; Old Whig V, 3.3.31; Impartial Examiner 5.14.36–39; *Brutus* [Virginia]

5.15; Henry 5.16.7, 11–14. As the case of Henry illustrates, however, the Anti-Federalists were not unequivocally opposed to monarchy. While Henry found the Constitution defective in that "it squints toward monarchy," he allowed that "if you cannot love a Republican Government, you may love the British monarchy. . . ." (5.16.7, 14).

Essay by Alfred

(PHILADELPHIA) INDEPENDENT GAZETTEER
13 December 1787

"Alfred" argues that America, being free and prosperous, should not give up her excellent state constitutions and substitute a vast empire. The present grievances stem from a want of money and of virtue, and the remedy is to be found in greater independence of foreign trade and in frugal public administration rather than in dangerous political changes. The author is unknown.

To the *real* Patriots of America.

The history of mankind teacheth us how *sudden* and easy the transition is 3.10.1
from *liberty* to a state of *slavery*. The *Romans*, the bravest people the world ever saw, after all their struggles and contentions, found themselves under the absolute direction of a *Nero*, a *Caligula*, a *Tiberius*, and a *Domitian*.

Governments, as they are the workmanship of *man*, so they partake of the changeableness of *his* nature; but the changes which happen, have been more frequently from *liberty* to *slavery*, than from slavery to liberty. When once a community are fast bound in chains and in misery, there *must* be great efforts, and the effusion of much blood, to liberate them from their wretched condition.

America is *now* free—she now enjoys a greater portion of political liberty 3.10.2
than any other country under heaven. How long she may continue so, depends entirely upon her own *caution* and *wisdom*. If she would look to herself more, and to Europe less, I am persuaded, it would tend to promote her felicity. She possesses all the advantages which characterize a rich country:—rich within herself, she ought less to regard the politics, the manufactures, and the interests of *distant* nations.

When I look to our situation, climate, extent, soil, and its productions, 3.10.3
rivers and ports; when I find I can at this time purchase grain, bread, meat, and other necessaries of life, at as reasonable a rate as in any country; when I see we are sending great quantities of tobacco, wheat and flour to England and other parts of the globe, beyond the Atlantic; when I get on the other

side of the western mountains, and see an extensive country, which, for its multitude of rivers and fertility of soil, is equal, if not superior, to any other whatever; when I see these things, I cannot be brought to believe that America is in that deplorable, ruined condition which some designing politicians represent; or that we are in a state of anarchy beyond redemption, unless we adopt, without any addition or amendment, the *new* constitution proposed by the late Convention; a constitution which, in my humble opinion, contains the seeds and scions of slavery and despotism.

3.10.4 When the volume of American constitutions first made its appearance in Europe, we find some of the most eminent political writers of the present age, and the reviewers of literature, full of admiration, and declaring they had never before seen so much *good sense, freedom,* and *real wisdom* in one publication. Our good friend Doctor *Price* was charmed, and almost prophesied the near approach of the happy days of the millennium.[1] We have lived under these constitutions; and, after the experience of a few years, some among us are *ready* to *trample* them under their feet, though they have been esteemed, even by our enemies, as "*pearls of great price.*"

3.10.5 Let us not, ye lovers of freedom, be rash and hasty—Perhaps the real evils we labor under, do not arise from these systems—There may be many other causes, to which our misfortunes may be properly attributed—Read the American constitutions, and you will find our essential rights and privileges well guarded and secured. May not *our manners* be the source of our national evils? May not our attachment to foreign trade increase them? Have we not acted imprudently in exporting almost all our gold and silver for foreign luxuries? It is now acknowledged that we have not a sufficient quantity of the precious metals to answer the various purposes of government and commerce; and without a breach of charity, it may be said that this deficiency arises from the want of public virtue, in prefering private interest to every other consideration.

3.10.6 If the states had in any tolerable degree been able to answer the requisitions of Congress; if the continental treasury had been so far assisted, as to have enabled us to pay the interest of our foreign debt, possibly we should have heard little, very little about a new system of government. It is a just observation that in modern times, *money* does every thing. If a government can command this unum necessarium from a certain revenue, it may be considered as wealthy and respectable; if not, it will lose its dignity, become inefficient and contemptible. But cannot we regulate our finances, and lay the foundations for a permanent, certain revenue, without undoing all that we have done, without making an entire new government? The most wise and philosophic characters have bestowed on our *old systems* the highest encomiums. Are we sure this new political phenomenon will not fail? If it should fail, is there not a great probability, *that our last state will be worse than the first?* Orators may declaim on the badness of the times as long as they please, but I must tell them that the want *of public virtue, and*

the want of money, are two of the principal sources of our grievances; and if we are under the pressure of these wants, it ought to teach us *frugality*—to adopt a frugal administration of public affairs.

It has been said that the civil list expences of the several states, have 3.10.7
enormously exceeded what they formerly were prior to the late revolution. Will the new system, which really comprehends an imperium in imperiis, be administered at a less expence, than we now experience? Can we create new *offices* without an accumulation of expences? Shall we enjoy a greater degree of political freedom and happiness under the proposed plan? If *these* and other advantages are not quite evident, we ought to be extremely cautious, how we change our condition. Systems may be very specious in theory; but fail us in practice. Government is a science which consists more in experience than in notional knowledge. What will suit the different manners, habits, and interests, of a wide extended country like America, can only be known by an *experiment;* and if that should fail, our liberties might fail with it. Cannot we be a number of confederated states, confederated for the purpose of defence and commerce, without erecting a fabric, more like *an empire*, than *a republic?* Empires are considered as despotic, and is there no danger of despotism in the establishment of *one* so great and complicated as the American will be?

Most liberal authors would dissuade us from so great and dangerous an 3.10.8
experiment.—I shall conclude at present, with a quotation from* one of them; "Vast empires are in many respects unnatural: but particularly in this, that be they ever *so well constituted, the affairs of the many must, in such governments, turn upon a few;* and the relation be less sensible, and in a manner lost between the magistrate and the people, *in a body so unwieldy in its limbs*, and whose members lie so remote from one another, and distant from the head. 'Tis in such bodies as these that *strong factions* are aptest to engender. The associating spirits, for want of exercise, form new movements, and seek a narrower sphere of activity, when they want action in a greater. Thus we have *wheels within wheels,* and in some national constitutions, notwithstanding the *absurdity* in politics, we have one empire within another."[3]

Alfred.

**The Characteristics.*[2]

1. Richard Price, *Observations on the Importance of the American Revolution, and the Means of Making It a Benefit to the World* (1784 and 1785; several U.S. editions), ch. 1 and passim.

2. Anthony, Earl of Shaftesbury, *Characteristics of Men, Manners, Opinions, Times, etc.* (first published as such in 1711), Treatise II, "*Sensus Communis;* An Essay on the Freedom of Wit and Humor in a Letter to a Friend," part 3, sec. 2. See the edition of John M. Robertson (Gloucester, Mass., 1963) I, 76.

3. James Madison, in *The Federalist* no. 10, turns Shaftesbury's argument on its head, finding the salvation of the free state precisely in the associating tendencies that

Shaftesbury goes on to describe here. The "associating genius," which Shaftesbury sees forming societies "in opposition to the general one of mankind, and to the real interest of the State," Madison sees as the engine of those freedom-preserving "wheels within wheels" that are one of the great advantages of the extended republic. See Agrippa IV, 4.6.16 n. 10. Shaftesbury agrees with Madison, however—as do some of the Anti-Federalists, e.g., Agrippa—that selfishness is a force for moderation. "[O]f all characters, the thorough selfish one is the least forward in taking party. The men of this sort are, in this respect, true men of moderation. They are secure of their temper, and possess themselves too well to be in danger of entering warmly into any cause, or into engaging deeply with any side or faction." *Characteristics* I, 76.

The Address and Reasons of Dissent of the Minority of the Convention of Pennsylvania To Their Constituents

PENNSYLVANIA PACKET AND DAILY ADVERTISER
18 December 1787

Failing in its attempt to secure the pages of the official journal to spread its views (a not uncommon practice in faction-torn Pennsylvania) the minority of the state ratifying convention published its Address and Reasons of Dissent in the *Pennsylvania Packet and Daily Advertiser*. The Address was frequently reprinted and commented on by both Federalist and Anti-Federalist writers.[1] The author was probably Samuel Bryan, even though he was not a member of the convention.[2]

The Address consists of three parts: (1) a description of events leading up to and concluding the Pennsylvania ratifying convention (3.11.1–2); (2) a list of proposed amendments, many of which found their way into the Bill of Rights (3.11.12–15); and (3) the three general grounds of dissent—(a) that an extensive territory cannot be governed on the principles of freedom, except as a confederation of republics (3.11.16–17), (b) that the government under the Constitution will not be a confederation but a consolidation founded on a destruction of the states (3.11.18–30), (c) that the Constitution is defective (3.11.30–56) in its failure to provide (i) a bill of rights, (ii) adequate representation, (iii) the traditional safeguards of the common law, (iv) a due separation of powers, (v) protection against excessive and tyrannical taxation, and (vi) adequate representation for Pennsylvania. For all of these reasons the government will not possess the confidence of the people and will have to rely on a standing army and a strictly controlled militia, leading to the suppression of individual liberty as well as to great expense.

1. For Centinel's complaint that the distribution of the Address was hampered by unfriendly postal arrangements, see Centinel XVIII, 2.7.182 n. 96. See the essays of A Freeman, addressed to the Minority of the Pennsylvania Convention, published in the *Pennsylvania Gazette* 23 January, 30 January, and 6 February 1788. These were, in turn, replied to by [Pennsylvania] Farmer, whose essay is printed below, 3.14. Noah Webster replied in a forceful and interesting essay, published under the pseudonym "America" in the New York *Daily Advertiser* 31 December 1787, and

reprinted in his *Collection of Essays* (Boston 1790). McMaster and Stone print some of the responses, beginning at p. 483, including Francis Hopkinson's Federalist parable, "The New Roof" (pp. 510–16), which appeared in the *Pennsylvania Packet* 29 December 1787.

2. Samuel Bryan claimed authorship in letters to Jefferson, 27 February 1801 and 24 July 1807, and in a letter to Albert Gallatin, 18 December 1790. Files of Ratification of Constitution project, National Archives. See Centinel 2.7. intro. n. 4. The attribution is strengthened by several striking similarities between passages in the Address of the Pennsylvania Convention minority, and in the Centinel letters, although of course one author might, under the circumstances, very well have drawn on another. Cf. the following passages of Centinel and the Pennsylvania Convention Minority, respectively: V, 2.7.95; 3.11.22. III, 2.7.73; 3.11.26. I, 2.7.9; 3.11.48. IV, 2.7.93; 3.11.56. IX, 2.7.129; 3.11.4–5. III, 2.7.70; 3.11.8.

3.11.1 It was not until after the termination of the late glorious contest, which made the people of the United States, an independent nation, that any defect was discovered in the present confederation. It was formed by some of the ablest patriots in America. It carried us successfully through the war; and the virtue and patriotism of the people, with their disposition to promote the common cause, supplied the want of power in Congress.

3.11.2 The requisition of Congress for the five *per cent.* impost was made before the peace, so early as the first of February, 1781, but was prevented taking effect by the refusal of one state; yet it is probable every state in the union would have agreed to this measure at that period, had it not been for the extravagant terms in which it was demanded. The requisition was new moulded in the year 1783, and accompanied with an additional demand of certain supplementary funds for 25 years. Peace had now taken place, and the United States found themselves labouring under a considerable foreign and domestic debt, incurred during the war. The requisition of 1783 was commensurate with the interest of the debt, as it was then calculated; but it has been more accurately ascertained since that time. The domestic debt has been found to fall several millions of dollars short of the calculation, and it has lately been considerably diminished by large sales of the western lands. The states have been called on by Congress annually for supplies until the general system of finance proposed in 1783 should take place.

3.11.3 It was at this time that the want of an efficient federal government was first complained of, and that the powers vested in Congress were found to be inadequate to the procuring of the benefits that should result from the union. The impost was granted by most of the states, but many refused the supplementary funds; the annual requisitions were set at nought by some of the states, while others complied with them by legislative acts, but were tardy in their payments, and Congress found themselves incapable of complying with their engagements, and supporting the federal government. It was found that our national character was sinking in the opinion of foreign

nations. The Congress could make treaties of commerce, but could not enforce the observance of them. We were suffering from the restrictions of foreign nations, who had shackled our commerce, while we were unable to retaliate: and all now agreed that it would be advantageous to the union to enlarge the powers of Congress; that they should be enabled in the amplest manner to regulate commerce, and to lay and collect duties on the imports throughout the United States. With this view a convention was first proposed by Virginia, and finally recommended by Congress for the different states to appoint deputies to meet in convention, "for the purposes of revising and amending the present articles of confederation, so as to make them adequate to the exigencies of the union." This recommendation the legislatures of twelve states complied with so hastily as not to consult their constituents on the subject; and though the different legislatures had no authority from their constituents for the purpose, they probably apprehended the necessity would justify the measure; and none of them extended their ideas at that time further than "revising and amending the present articles of confederation." Pennsylvania by the act appointing deputies expressly confined their powers to this object; and though it is probable that some of the members of the assembly of this state had at that time in contemplation to annihilate the present confederation, as well as the constitution of Pennsylvania, yet the plan was not sufficiently matured to communicate it to the public.

3.11.4 The majority of the legislature of this commonwealth, were at that time under the influence of the members from the city of Philadelphia. They agreed that the deputies sent by them to convention should have no compensation for their services, which determination was calculated to prevent the election of any member who resided at a distance from the city. It was in vain for the minority to attempt electing delegates to the convention, who understood the circumstances, and the feelings of the people, and had a common interest with them. They found a disposition in the leaders of the majority of the house to chuse themselves and some of their dependants. The minority attempted to prevent this by agreeing to vote for some of the leading members, who they knew had influence enough to be appointed at any rate, in hopes of carrying with them some respectable citizens of Philadelphia, in whose principles and integrity they could have more confidence; but even in this they were disappointed, except in one member: the eighth member was added at a subsequent session of the assembly.[1]

3.11.5 The Continental convention met in the city of Philadelphia at the time appointed. It was composed of some men of excellent characters; of others who were more remarkable for their ambition and cunning, than their patriotism; and of some who had been opponents to the independence of the United States. The delegates from Pennsylvania were, six of them, uniform and decided opponents to the constitution of this commonwealth. The con-

vention sat upwards of four months. The doors were kept shut, and the members brought under the most solemn engagements of secrecy.* Some of those who opposed their going so far beyond their powers, retired, hopeless, from the convention, others had the firmness to refuse signing the plan altogether; and many who did sign it, did it not as a system they wholly approved, but as the best that could be then obtained, and notwithstanding the time spent on this subject, it is agreed on all hands to be a work of haste and accommodation.

3.11.6 Whilst the gilded chains were forging in the secret conclave, the meaner instruments of despotism without, were busily employed in alarming the fears of the people with dangers which did not exist, and exciting their hopes of greater advantages from the expected plan than even the best government on earth could produce.

3.11.7 The proposed plan had not many hours issued forth from the womb of suspicious secrecy, until such as were prepared for the purpose, were carrying about petitions for people to sign, signifying their approbation of the system, and requesting the legislature to call a convention. While every measure was taken to intimidate the people against opposing it, the public papers teemed with the most violent threats against those who should dare to think for themselves, and *tar and feathers* were liberally promised to all those who would not immediately join in supporting the proposed government be it what it would. Under such circumstances petitions in favour of calling a convention were signed by great numbers in and about the city, before they had leisure to read and examine the system, many of whom, now they are better acquainted with it, and have had time to investigate its principles, are heartily opposed to it. The petitions were speedily handed into the legislature.

3.11.8 Affairs were in this situation when on the 28th of September last a resolution was proposed to the assembly by a member of the house who had been also a member of the federal convention, for calling a state convention, to be elected within *ten* days for the purpose of examining and adopting the proposed constitution of the United States, though at this time the house had not received it from Congress. This attempt was opposed by a minority, who after offering every argument in their power to prevent the precipitate measure, without effect, absented themselves from the house as the only alternative left them, to prevent the measure taking place previous to their constituents being acquainted with the business—That violence and outrage which had been so often threatened was now practised; some of the members were seized the next day by a mob collected for the purpose, and forcibly dragged to the house, and there detained by force whilst the quorum of the legislature, *so formed*, compleated their resolution. We shall dwell no longer on this subject, the people of Pennsylvania have been already ac-

*The Journals of the conclave are still concealed.

quainted therewith.[2] We would only further observe that every member of the legislature, previously to taking his seat, by solemn oath or affirmation, declares, "that he will not do or consent to any act or thing whatever that shall have a tendency to lessen or abridge their rights and privileges, as declared in the constitution of this state." And that constitution which they are so solemnly sworn to support cannot legally be altered but by a recommendation of a council of censors, who alone are authorised to propose alterations and amendments, and even these must be published at least *six months*, for the consideration of the people.[3]—The proposed system of government for the United States, if adopted, will alter and may annihilate the constitution of Pennsylvania; and therefore the legislature had no authority whatever to recommend the calling a convention for that purpose. This proceeding could not be considered as binding on the people of this commonwealth. The house was formed by violence, some of the members composing it were detained there by force, which alone would have vitiated any proceedings, to which they were otherwise competent; but had the legislature been legally formed, this business was absolutely without their power.[4]

In this situation of affairs were the subscribers elected members of the convention of Pennsylvania. A convention called by a legislature in direct violation of their duty, and composed in part of members, who were compelled to attend for that purpose, to consider of a constitution proposed by a convention of the United States, who were not appointed for the purpose of framing a new form of government, but whose powers were expressly confined to altering and amending the present articles of confederation.—Therefore the members of the continental convention in proposing the plan acted as individuals, and not as deputies from Pennsylvania.* The assembly who called the state convention acted as individuals, and not as the legislature of Pennsylvania; nor could they or the convention chosen on their recommendation have authority to do any act or thing, that can alter or annihilate the constitution of Pennsylvania (both of which will be done by the new constitution) nor are their proceedings in our opinion, at all binding on the people. 3.11.9

The election for members of the convention was held at so early a period and the want of information was so great, that some of us did not know of it until after it was over, and we have reason to believe that great numbers of the people of Pennsylvania have not yet had an opportunity of sufficiently 3.11.10

*The continental convention in direct violation of the 13th article of the confederation, have declared, "that the ratification of nine states shall be sufficient for the establishment of this constitution, between the states so ratifying the same."—Thus has the plighted faith of the states been sported with! They had solemnly engaged that the confederation now subsisting should be inviolably preserved by each of them, and the union thereby formed, should be perpetual, unless the same should be altered by mutual consent.

examining the proposed constitution.—We apprehend that no change can take place that will affect the internal government or constitution of this commonwealth, unless a majority of the people should evidence a wish for such a change; but on examining the number of votes given for members of the present state convention, we find that of upwards of *seventy thousand* freemen who are intitled to vote in Pennsylvania, the whole convention has been elected by about *thirteen thousand* voters, and though *two thirds* of the members of the convention have thought proper to ratify the proposed constitution, yet those *two thirds* were elected by the votes of only *six thousand and eight hundred* freemen.

3.11.11 In the city of Philadelphia and some of the eastern counties, the junto that took the lead in the business agreed to vote for none but such as would solemnly promise to adopt the system in *toto*, without exercising their judgment. In many of the counties the people did not attend the elections as they had not an opportunity of judging of the plan. Others did not consider themselves bound by the call of a set of men who assembled at the state-house in Philadelphia, and assumed the name of the legislature of Pennsylvania; and some were prevented from voting by the violence of the party who were determined at all events to force down the measure. To such lengths did the tools of despotism carry their outrage, that in the night of the election for members of convention, in the city of Philadelphia, several of the subscribers (being then in the city to transact your business) were grossly abused, ill-treated and insulted while they were quiet in their lodgings, though they did not interfere, nor had any thing to do with the said election, but as they apprehend, because they were supposed to be adverse to the proposed constitution, and would not tamely surrender those sacred rights, which you had committed to their charge.

3.11.12 The convention met, and the same disposition was soon manifested in considering the proposed constitution, that had been exhibited in every other stage of the business. We were prohibited by an express vote of the convention, from taking any question on the separate articles of the plan, and reduced to the necessity of adopting or rejecting *in toto*.—'Tis true the majority permitted us to debate on each article, but restrained us from proposing amendments.—They also determined not to permit us to enter on the minutes our reasons of dissent against any of the articles, nor even on the final question our reasons of dissent against the whole. Thus situated we entered on the examination of the proposed system of government, and found it to be such as we could not adopt, without, as we conceived, surrendering up your dearest rights. We offered our objections to the convention, and opposed those parts of the plan, which, in our opinion, would be injurious to you, in the best manner we were able; and closed our arguments by offering the following propositions to the convention.

3.11.13 1. The right of conscience shall be held inviolable; and neither the legis-

lative, executive nor judicial powers of the United States shall have authority to alter, abrogate, or infringe any part of the constitution of the several states, which provide for the preservation of liberty in matters of religion.

2. That in controversies respecting property, and in suits between man and man, trial by jury shall remain as heretofore, as well in the federal courts, as in those of the several states.[5]

3. That in all capital and criminal prosecutions, a man has a right to demand the cause and nature of his accusation, as well in the federal courts, as in those of the several states; to be heard by himself and his counsel; to be confronted with the accusers and witnesses; to call for evidence in his favor, and a speedy trial by an impartial jury of his vicinage, without whose unanimous consent, he cannot be found guilty, nor can he be compelled to give evidence against himself; and that no man be deprived of his liberty, except by the law of the land or the judgment of his peers.

4. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel nor unusual punishments inflicted.

5. That warrants unsupported by evidence, whereby any officer or messenger may be commanded or required to search suspected places, or to seize any person or persons, his or their property, not particularly described, are grievous and oppressive, and shall not be granted either by the magistrates of the federal government or others.

6. That the people have a right to the freedom of speech, of writing and publishing their sentiments, therefore, the freedom of the press shall not be restrained by any law of the United States.[6]

7. That the people have a right to bear arms for the defence of themselves and their own state, or the United States, or for the purpose of killing game; and no law shall be passed for disarming the people or any of them, unless for crimes committed, or real danger of public injury from individuals; and as standing armies in the time of peace are dangerous to liberty, they ought not to be kept up: and that the military shall be kept under strict subordination to and be governed by the civil powers.

8. The inhabitants of the several states shall have liberty to fowl and hunt in seasonable times, on the lands they hold, and on all other lands in the United States not inclosed, and in like manner to fish in all navigable waters, and others not private property, without being restrained therein by any laws to be passed by the legislature of the United States.[7]

9. That no law shall be passed to restrain the legislatures of the several states from enacting laws for imposing taxes, except imposts and duties on goods imported or exported, and that no taxes, except imposts and duties upon goods imported and exported, and postage on letters shall be levied by the authority of Congress.

10. That the house of representatives be properly increased in number; that elections shall remain free; that the several states shall have power to

regulate the elections for senators and representatives, without being controuled either directly or indirectly by any interference on the part of the Congress; and that elections of representatives be annual.

11. That the power of organizing, arming and disciplining the militia (the manner of disciplining the militia to be prescribed by Congress) remain with the individual states, and that Congress shall not have authority to call or march any of the militia out of their own state, without the consent of such state, and for such length of time only as such state shall agree.

That the sovereignty, freedom and independency of the several states shall be retained, and every power, jurisdiction and right which is not by this constitution expressly delegated to the United States in Congress assembled.

12. That the legislative, executive, and judicial powers be kept separate; and to this end that a constitutional council be appointed, to advise and assist the president, who shall be responsible for the advice they give, hereby the senators would be relieved from almost constant attendance; and also that the judges be made completely independent.

13. That no treaty which shall be directly opposed to the existing laws of the United States in Congress assembled, shall be valid until such laws shall be repealed, or made conformable to such treaty; neither shall any treaties be valid which are in contradiction to the constitution of the United States, or the constitutions of the several states.

14. That the judiciary power of the United States shall be confined to cases affecting ambassadors, other public ministers and consuls; to cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states—between a state and citizens of different states—between citizens claiming lands under grants of different states; and between a state or the citizen thereof and foreign states, and in criminal cases, to such only as are expressly enumerated in the constitution, and that the United States in Congress assembled, shall not have power to enact laws, which shall alter the laws of descents and distribution of the effects of deceased persons, the titles of lands or goods, or the regulation of contracts in the individual states.

3.11.14 After reading these propositions, we declared our willingness to agree to the plan, provided it was so amended as to meet these propositions, or something similar to them: and finally moved the convention to adjourn, to give the people of Pennsylvania time to consider the subject, and determine for themselves; but these were all rejected, and the final vote was taken, when our duty to you induced us to vote against the proposed plan, and to decline signing the ratification of the same.

3.11.15 During the discussion we met with many insults, and some personal abuse; we were not even treated with decency, during the sitting of the convention, by the persons in the gallery of the house; however, we flatter

ourselves that in contending for the preservation of those invaluable rights you have thought proper to commit to our charge, we acted with a spirit becoming freemen, and being desirous that you might know the principles which actuated our conduct, and being prohibited from inserting our reasons of dissent on the minutes of the convention, we have subjoined them for your consideration, as to you alone we are accountable. It remains with you whether you will think those inestimable privileges, which you have so ably contended for, should be sacrificed at the shrine of despotism, or whether you mean to contend for them with the same spirit that has so often baffled the attempts of an aristocratic faction, to rivet the shackles of slavery on you and your unborn posterity.

Our objections are comprised under three general heads of dissent, viz.

We dissent, first, because it is the opinion of the most celebrated writers 3.11.16
on government, and confirmed by uniform experience, that a very extensive territory cannot be governed on the principles of freedom, otherwise than by a confederation of republics, possessing all the powers of internal government; but united in the management of their general, and foreign concerns.

If any doubt could have been entertained of the truth of the foregoing 3.11.17
principle, it has been fully removed by the concession of *Mr. Wilson*, one of majority on this question; and who was one of the deputies in the late general convention. In justice to him, we will give his own words; they are as follows, viz.[8] "The extent of country for which the new constitution was required, produced another difficulty in the business of the federal convention. It is the opinion of some celebrated writers, that to a small territory, the democratical; to a middling territory (as Montesquieu has termed it) the monarchial; and to an extensive territory, the despotic form of government is best adapted. Regarding then the wide and almost unbounded jurisdiction of the United States, at first view, the hand of despotism seemed necessary to controul, connect, and protect it; and hence the chief embarrassment rose. For, we know that, altho' our constituents would chearfully submit to the legislative restraints of a free government, they would spurn at every attempt to shackle them with despotic power."—And again in another part of his speech he continues.—"Is it probable that the dissolution of the state governments, and the establishment of one *consolidated empire* would be eligible in its nature, and satisfactory to the people in its administration? I think not, as I have given reasons to shew that so extensive a territory could not be governed, connected, and preserved, but by the *supremacy of despotic power*. All the exertions of the most potent emperors of Rome were not capable of keeping that empire together, which in extent was far inferior to the dominion of America."[9]

We dissent, secondly, because the powers vested in Congress by this 3.11.18
constitution, must necessarily annihilate and absorb the legislative, executive, and judicial powers of the several states, and produce from their ruins

one consolidated government, which from the nature of things will be *an iron handed despotism*, as nothing short of the supremacy of despotic sway could connect and govern these United States under one government.

3.11.19 As the truth of this position is of such decisive importance, it ought to be fully investigated, and if it is founded to be clearly ascertained; for, should it be demonstrated, that the powers vested by this constitution in Congress, will have such an effect as necessarily to produce one consolidated government, the question then will be reduced to this short issue, viz. whether satiated with the blessings of liberty; whether repenting of the folly of so recently asserting their unalienable rights, against foreign despots at the expence of so much blood and treasure, and such painful and arduous struggles, the people of America are now willing to resign every privilege of freemen, and submit to the dominion of an absolute government, that will embrace all America in one chain of despotism; or whether they will with virtuous indignation, spurn at the shackles prepared for them, and confirm their liberties by a conduct becoming freemen.

3.11.20 That the new government will not be a confederacy of states, as it ought, but one consolidated government, founded upon the destruction of the several governments of the states, we shall now shew.

The powers of Congress under the new constitution, are complete and unlimited over the *purse* and the *sword*, and are perfectly independent of, and supreme over, the state governments; whose intervention in these great points is entirely destroyed. By virtue of their power of taxation, Congress may command the whole, or any part of the property of the people. They may impose what imposts upon commerce; they may impose what land taxes, poll taxes, excises, duties on all written instruments, and duties on every other article that they may judge proper; in short, every species of taxation, whether of an external or internal nature is comprised in section the 8th, of article the 1st, viz. "The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defence and general welfare of the United States."

3.11.21 As there is no one article of taxation reserved to the state governments, the Congress may monopolise every source of revenue, and thus indirectly demolish the state governments, for without funds they could not exist, the taxes, duties and excises imposed by Congress may be so high as to render it impracticable to levy further sums on the same articles; but whether this should be the case or not, if the state governments should presume to impose taxes, duties or excises, on the same articles with Congress, the latter may abrogate and repeal the laws whereby they are imposed, upon the allegation that they interfere with the due collection of their taxes, duties or excises, by virtue of the following clause, part of section 8th, article 1st. viz. "To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this con-

stitution in the government of the United States, or in any department or officer thereof."[10]

The Congress might gloss over this conduct by construing every purpose for which the state legislatures now lay taxes, to be for the "*general welfare,*" and therefore as of their ju[ris]diction.

3.11.22 And the supremacy of the laws of the United States is established by article 6th, viz. "That this constitution and the laws of the United States, which shall be made in pursuance thereof, and *all treaties* made, or which shall be made, under the authority of the United States, shall be the *supreme law* of the *land;* and *the judges in every state shall be bound thereby; any thing in the constitution or laws of any state to the contrary notwithstanding.*" It has been alledged that the words "pursuant to the constitution," are a restriction upon the authority of Congress;[11] but when it is considered that by other sections they are invested with every efficient power of government, and which may be exercised to the absolute destruction of the state governments, without any violation of even the forms of the constitution, this seeming restriction, as well as every other restriction in it, appears to us to be nugatory and delusive; and only introduced as a blind upon the real nature of the government. In our opinion, "pursuant to the constitution," will be co-extensive with the *will* and *pleasure* of Congress, which, indeed, will be the only limitation of their powers.

3.11.23 We apprehend that two co-ordinate sovereignties would be a solecism in politics.[12] That therefore as there is no line of distinction drawn between the general, and state governments; as the sphere of their jurisdiction is undefined, it would be contrary to the nature of things, that both should exist together, one or the other would necessarily triumph in the fullness of dominion. However the contest could not be of long continuance, as the state governments are divested of every means of defence, and will be obliged by "the supreme law of the land" *to yield at discretion.*

3.11.24 It has been objected to this total destruction of the state governments, that the existence of their legislatures is made essential to the organization of Congress; that they must assemble for the appointment of the senators and president general of the United States.[13] True, the state legislatures may be continued for some years, as boards of appointment, merely, after they are divested of every other function, but the framers of the constitution foreseeing that the people will soon be disgusted with this solemn mockery of a government without power and usefulness, have made a provision for relieving them from the imposition, in section 4th, of article 1st, viz. "The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; *but the Congress may at any time, by law make or alter such regulations; except as to the place of chusing senators.*"

3.11.25 As Congress have the controul over the time of the appointment of the

president general, of the senators and of the representatives of the United States, they may prolong their existence in office, for life, by postponing the time of their election and appointment, from period to period, under various pretences, such as an apprehension of invasion, the factious disposition of the people, or any other plausible pretence that the occasion may suggest; and having thus obtained life-estates in the government, they may fill up the vacancies themselves, by their controul over the mode of appointment; with this exception in regard to the senators, that as the place of appointment for them, must, by the constitution, be in the particular state, they may depute some body in the respective states, to fill up the vacancies in the senate, occasioned by death, until they can venture to assume it themselves. In this manner, may the only restriction in this clause be evaded. By virtue of the foregoing section, when the spirit of the people shall be gradually broken; when the general government shall be firmly established, and when a numerous standing army shall render opposition vain, the Congress may compleat the system of despotism, in renouncing all dependance on the people, by continuing themselves, and children in the government.

3.11.26 The celebrated *Montesquieu*, in his Spirit of Laws, vol. 1, page 12th, says, "That in a democracy there can be no exercise of sovereignty, but by the suffrages of the people, which are their will; now the sovereigns will is the sovereign himself; the laws therefore, which establish the right of suffrage, are fundamental to this government. In fact, it is as important to regulate in a republic in what manner, by whom, and concerning what suffrages are to be given, as it is in a monarchy to know who is the prince, and after what manner he ought to govern."[14] The *time*, *mode* and *place* of the election of representatives, senators and president general of the United States, ought not to be under the controul of Congress, but fundamentally ascertained and established.

3.11.27 The new constitution, consistently with the plan of consolidation, contains no reservation of the rights and privileges of the state governments, which was made in the confederation of the year 1778, by article the 2d, viz. "That each state retains its sovereignty, freedom and independence, and every power, jurisdiction and right, which is not by this confederation expressly delegated to the United States in Congress assembled."

The legislative power vested in Congress by the foregoing recited sections, is so unlimited in its nature; may be so comprehensive and boundless [in] its exercise, that this alone would be amply sufficient to annihilate the state governments, and swallow them up in the grand vortex of general empire.

3.11.28 The judicial powers vested in Congress are also so various and extensive, that by legal ingenuity they may be extended to every case, and thus absorb the state judiciaries, and when we consider the decisive influence that a general judiciary would have over the civil polity of the several states, we do

not hesitate to pronounce that this power, unaided by the legislative, would effect a consolidation of the states under one government.

The powers of a court of equity, vested by this constitution, in the tribu- 3.11.29
nals of Congress; powers which do not exist in Pennsylvania, unless so far as they can be incorporated with jury trial, would, in this state, greatly contribute to this event. The rich and wealthy suitors would eagerly lay hold of the infinite mazes, perplexities and delays, which a court of chancery, with the appellate powers of the supreme court in fact as well as law would furnish him with, and thus the poor man being plunged in the bottomless pit of legal discussion, would drop his demand in despair.

In short, consolidation pervades the whole constitution. It begins with an 3.11.30
annunciation that such was the intention. The main pillars of the fabric correspond with it, and the concluding paragraph is a confirmation of it. The preamble begins with the words, "We the people of the United States," which is the style of a compact between individuals entering into a state of society, and not that of a confederation of states.[15] The other features of consolidation, we have before noticed.

Thus we have fully established the position, that the powers vested by this constitution in Congress, will effect a consolidation of the states under one government, which even the advocates of this constitution admit, could not be done without the sacrifice of all liberty.

3. We dissent, Thirdly, Because if it were practicable to govern so exten- 3.11.31
sive a territory as these United States includes, on the plan of a consolidated government, consistent with the principles of liberty and the happiness of the people, yet the construction of this constitution is not calculated to attain the object, for independent of the nature of the case, it would of itself, necessarily, produce a despotism, and that not by the usual gradations, but with the celerity that has hitherto only attended revolutions effected by the sword.

To establish the truth of this position, a cursory investigation of the principles and form of this constitution will suffice.

The first consideration that this review suggests, is the omission of a BILL 3.11.32
of RIGHTS, ascertaining and fundamentally establishing those unalienable and personal rights of men, without the full, free, and secure enjoyment of which there can be no liberty, and over which it is not necessary for a good government to have the controul. The principal of which are the rights of conscience, personal liberty by the clear and unequivocal establishment of the writ of *habeas corpus*, jury trial in criminal and civil cases, by an impartial jury of the vicinage or county, with the common-law proceedings, for the safety of the accused in criminal prosecutions; and the liberty of the press, that scourge of tyrants, and the grand bulwark of every other liberty and privilege; the stipulations heretofore made in favor of them in the state constitutions, are entirely superceded by this constitution.

3.11.33 The legislature of a free country should be so formed as to have a competent knowledge of its constituents, and enjoy their confidence. To produce these essential requisites, the representation ought to be fair, equal, and sufficiently numerous, to possess the same interests, feelings, opinions, and views, which the people themselves would possess, were they all assembled; and so numerous as to prevent bribery and undue influence, and so responsible to the people, by frequent and fair elections, as to prevent their neglecting or sacrificing the views and interests of their constituents, to their own pursuits.

3.11.34 We will now bring the legislature under this constitution to the test of the foregoing principles, which will demonstrate, that it is deficient in every essential quality of a just and safe representation.

The house of representatives is to consist of 65 members; that is one for about every 50,000 inhabitants, to be chosen every two years. Thirty-three members will form a quorum for doing business; and 17 of these, being the majority, determine the sense of the house.

The senate, the other constituent branch of the legislature, consists of 26 members being *two* from each state, appointed by their legislatures every six years—fourteen senators make a quorum; the majority of whom, eight, determines the sense of that body: except in judging on impeachments, or in making treaties, or in expelling a member, when two thirds of the senators present, must concur.

The president is to have the controul over the enacting of laws, so far as to make the concurrence of *two* thirds of the representatives and senators present necessary, if he should object to the laws.

3.11.35 Thus it appears that the liberties, happiness, interests, and great concerns of the whole United States, may be dependent upon the integrity, virtue, wisdom, and knowledge of 25 or 26 men—How unadequate and unsafe a representation! Inadequate, because the sense and views of 3 or 4 millions of people diffused over so extensive a territory comprising such various climates, products, habits, interests, and opinions, cannot be collected in so small a body; and besides, it is not a fair and equal representation of the people even in proportion to its number, for the smallest state has as much weight in the senate as the largest, and from the smallness of the number to be chosen for both branches of the legislature; and from the mode of election and appointment, which is under the controul of Congress; and from the nature of the thing, men of the most elevated rank in life, will alone be chosen. The other orders in the society, such as farmers, traders, and mechanics, who all ought to have a competent number of their best informed men in the legislature, will be totally unrepresented.[16]

3.11.36 The representation is unsafe, because in the exercise of such great powers and trusts, it is so exposed to corruption and undue influence, by the gift of the numerous places of honor and emoluments at the disposal of the execu-

tive; by the arts and address of the great and designing; and by direct bribery.

The representation is moreover inadequate and unsafe, because of the long terms for which it is appointed, and the mode of its appointment, by which Congress may not only controul the choice of the people, but may so manage as to divest the people of this fundamental right, and become self-elected.

The number of members in the house of representatives *may* be encreased to one for every 30,000 inhabitants. But when we consider, that this cannot be done without the consent of the senate, who from their share in the legislative, in the executive, and judicial departments, and permanency of appointment, will be the great efficient body in this government, and whose weight and predominancy would be abridged by an increase of the representatives, we are persuaded that this is a circumstance that cannot be expected. On the contrary, the number of representatives will probably be continued at 65, although the population of the country may swell to treble what it now is; unless a revolution should effect a change.[17] 3.11.37

We have before noticed the judicial power as it would effect a consolidation of the states into one government; we will now examine it, as it would affect the liberties and welfare of the people, supposing such a government were practicable and proper. 3.11.38

The judicial power, under the proposed constitution, is founded on the well-known principles of the *civil law*, by which the judge determines both on law and fact, and appeals are allowed from the inferior tribunals to the superior, upon the whole question; so that *facts* as well as *law*, would be re-examined, and even new facts brought forward in the court of appeals; and to use the words of a very eminent Civilian—"The cause is many times another thing before the court of appeals, than what it was at the time of the first sentence."[18]

That this mode of proceeding is the one which must be adopted under this constitution, is evident from the following circumstances:—1st. That the trial by jury, which is the grand characteristic of the common law, is secured by the constitution, only in criminal cases.—2d. That the appeal from both *law* and *fact* is expressly established, which is utterly inconsistent with the principles of the common law, and trials by jury. The only mode in which an appeal from law and fact can be established, is, by adopting the principles and practice of the civil law; unless the United States should be drawn into the absurdity of calling and swearing juries, merely for the purpose of contradicting their verdicts, which would render juries contemptible and worse than useless.—3d. That the courts to be established would decide on all cases *of law and equity*, which is a well known characteristic of the civil law, and these courts would have conusance not only of the laws of the United States and of treaties, and of cases affecting ambassadors, but of all 3.11.39

cases of *admiralty and maritime jurisdiction,* which last are matters belonging exclusively to the civil law, in every nation in Christendom.

3.11.40 Not to enlarge upon the loss of the invaluable right of trial by an unbiassed jury, so dear to every friend of liberty, the monstrous expence and inconveniences of the mode of proceedings to be adopted, are such as will prove intolerable to the people of this country. The lengthy proceedings of the civil law courts in the chancery of England, and in the courts of Scotland and France, are such that few men of moderate fortune can endure the expence of; the poor man must therefore submit to the wealthy. Length of purse will too often prevail against right and justice. For instance, we are told by the learned judge *Blackstone,* that a question only on the property of an ox, of the value of *three* guineas, originating under the civil law proceedings in Scotland, after many interlocutory orders and sentences below, was carried at length from the court of sessions, the highest court in that part of Great Britain, by way of *appeal* to the house of lords, *where* the question of law and fact was finally determined. He adds, that no pique or spirit could in the court of king's bench or common pleas at Westminster, have given continuance to such a cause for a tenth part of the time, nor have cost a twentieth part of the expence. Yet the costs in the courts of king's bench and common pleas in England, are infinitely greater than those which the people of this country have ever experienced. We abhor the idea of losing the transcendant privilege of trial by jury, with the loss of which, it is remarked by the same learned author, that in Sweden, the liberties of the commons were extinguished by an aristocratic senate: and that *trial by jury* and the liberty of the people went out together.[19] At the same time we regret the intolerable delay, the enormous expences and infinite vexation to which the people of this country will be exposed from the voluminous proceedings of the courts of civil law, and especially from the appellate jurisdiction, by means of which a man may be drawn from the utmost boundaries of this extensive country to the seat of the supreme court of the nation to contend, perhaps with a wealthy and powerful adversary. The consequence of this establishment will be an absolute confirmation of the power of aristocratical influence in the courts of justice: for the common people will not be able to contend or struggle against it.

3.11.41 Trial by jury in criminal cases may also be excluded by declaring that the libeller for instance shall be liable to an action of debt for a specified sum; thus evading the common law prosecution by indictment and trial by jury. And the common course of proceeding against a ship for breach of revenue laws by information (which will be classed among civil causes) will at the civil law be within the resort of a court, where no jury intervenes. Besides, the benefit of jury trial, in cases of a criminal nature, which cannot be evaded, will be rendered of little value, by calling the accused to answer far from home; there being no provision that the trial be by a jury of the neighbourhood or country. Thus an inhabitant of Pittsburgh, on a charge of

crime committed on the banks of the Ohio, may be obliged to defend himself at the side of the Delaware, and so *vice versa*. To conclude this head: we observe that the judges of the courts of Congress would not be independent, as they are not debarred from holding other offices, during the pleasure of the president and senate, and as they may derive their support in part from fees, alterable by the legislature.

3.11.42 The next consideration that the constitution presents, is the undue and dangerous mixture of the powers of government; the same body possessing legislative, executive, and judicial powers. The senate is a constituent branch of the legislature, it has judicial power in judging on impeachments, and in this case unites in some measure the characters of judge and party, as all the principal officers are appointed by the president-general, with the concurrence of the senate and therefore they derive their offices in part from the senate. This may biass the judgments of the senators and tend to screen great delinquents from punishment. And the senate has, moreover, various and great executive powers, viz. in concurrence with the president-general, they form treaties with foreign nations, that may controul and abrogate the constitutions and laws of the several states. Indeed, there is no power, privilege or liberty of the state governments, or of the people, but what may be affected by virtue of this power. For all treaties, made by them, are to be the "supreme law of the land, any thing in the constitution or laws of any state, to the contrary notwithstanding."

3.11.43 And this great power may be exercised by the president and 10 senators (being two-thirds of 14, which is a quorum of that body). What an inducement would this offer to the ministers of foreign powers to compass by bribery *such concessions* as could not otherwise be obtained. It is the unvaried usage of all free states, whenever treaties interfere with the positive laws of the land, to make the intervention of the legislature necessary to give them operation. This became necessary, and was afforded by the parliament of Great-Britain. In consequence of the late commercial treaty between that kingdom and France—As the senate judges on impeachments, who is to try the members of the senate for the abuse of this power! And none of the great appointments to office can be made without the consent of the senate.

3.11.44 Such various, extensive, and important powers combined in one body of men, are inconsistent with all freedom; the celebrated Montesquieu tells us, that "when the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty, because apprehensions may arise, lest the same monarch or *senate* should enact tyrannical laws, to execute them in a tyrannical manner."

"Again, there is no liberty, if the power of judging be not separated from the legislative and executive powers. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary controul: for the judge would then be legislator. Were it joined to the executive power, the judge might behave with all the violence of an oppressor. There would be an

end of every thing, were the same man, or the same body of the nobles, or of the people, to exercise those three powers; that of enacting laws; that of executing the public resolutions; and that of judging the crimes or differences of individuals."[20]

3.11.45 The president general is dangerously connected with the senate; his coincidence with the views of the ruling junto in that body, is made essential to his weight and importance in the government, which will destroy all independency and purity in the executive department, and having the power of pardoning without the concurrence of a council, he may skreen from punishment the most treasonable attempts that may be made on the liberties of the people, when instigated by his coadjutors in the senate. Instead of this dangerous and improper mixture of the executive with the legislative and judicial, the supreme executive powers ought to have been placed in the president, with a small independent council, made personally responsible for every appointment to office or other act, by having their opinions recorded; and that without the concurrence of the majority of the quorum of this council, the president should not be capable of taking any step.

3.11.46 We have before considered internal taxation, as it would effect the destruction of the state governments, and produce one consolidated government. We will now consider that subject as it affects the personal concerns of the people.

The power of direct taxation applies to every individual, as congress, under this government, is expressly vested with the authority of laying a capitation or poll tax upon every person to any amount. This is a tax that, however oppressive in its nature, and unequal in its operation, is certain as to its produce and simple in its collection: it cannot be evaded like the objects of imposts or excise, and will be paid, because all that a man hath will he give for his head. This tax is so congenial to the nature of despotism, that it has ever been a favorite under such governments. Some of those who were in the late general convention from this state have long laboured to introduce a poll-tax among us.

3.11.47 The power of direct taxation will further apply to every individual, as congress may tax land, cattle, trades, occupations, etc. in any amount, and every object of internal taxation is of that nature, that however oppressive, the people will have but this alternative, except to pay the tax, or let their property be taken, for all resistance will be in vain. The standing army and select militia would enforce the collection.

3.11.48 For the moderate exercise of this power, there is no controul left in the state governments, whose intervention is destroyed. No relief, or redress of grievances can be extended, as heretofore by them. There is not even a declaration of RIGHTS to which the people may appeal for the vindication of their wrongs in the court of justice. They must therefore, implicitly obey the most arbitrary laws, as the worst of them will be pursuant to the principles and form of the constitution, and that strongest of all checks upon the

conduct of administration, *responsibility to the people*, will not exist in this government. The permanency of the appointments of senators and representatives, and the controul the congress have over their election, will place them independent of the sentiments and resentment of the people, and the administration having a greater interest in the government than in the community, there will be no consideration to restrain them from oppression and tyranny. In the government of this state, under the old confederation, the members of the legislature are taken from among the people, and their interests and welfare are so inseparably connected with those of their constituents, that they can derive no advantage from oppressive laws and taxes, for they would suffer in common with their fellow citizens; would participate in the burthens they impose on the community, as they must return to the common level, after a short period; and notwithstanding every ex[er]tion of influence, every means of corruption, a necessary rotation excludes them from permanency in the legislature.

This large state is to have but ten members in that Congress which is to 3.11.49
have the liberty, property and dearest concerns of every individual in this vast country at absolute command and even these ten persons, who are to be our only guardians; who are to supercede the legislature of Pennsylvania, will not be of the choice of the people, nor amenable to them. From the mode of their election and appointment they will consist of the lordly and high-minded; of men who will have no congenial feelings with the people, but a perfect indifference for, and contempt of them; they will consist of those harpies of power, that prey upon the very vitals; that riot on the miseries of the community. But we will suppose, although in all probability it may never be realized in fact, that our deputies in Congress have the welfare of their constituents at heart, and will exert themselves in their behalf, what security could even this afford; what relief could they extend to their oppressed constituents? To attain this, the majority of the deputies of the twelve other states in Congress must be alike well disposed; must alike forego the sweets of power, and relinquish the pursuits of ambition, which from the nature of things is not to be expected. If the people part with a responsible representation in the legislature, founded upon fair, certain and frequent elections, they have nothing left they can call their own. Miserable is the lot of that people whose every concern depends on the WILL and PLEASURE of their rulers. Our soldiers will become Janissaries, and our officers of government Bashaws; in short, the system of despotism will soon be compleated.

From the foregoing investigation, it appears that the Congress under this 3.11.50
constitution will not possess the confidence of the people, which is an essential requisite in a good government; for unless the laws command the confidence and respect of the great body of the people, so as to induce them to support them, when called on by the civil magistrate, they must be executed by the aid of a numerous standing army, which would be in-

consistent with every idea of liberty; for the same force that may be employed to compel obedience to good laws, might and probably would be used to wrest from the people their constitutional liberties. The framers of this constitution appear to have been aware of this great deficiency; to have been sensible that no dependence could be placed on the people for their support: but on the contrary, that the government must be executed by force. They have therefore made a provision for this purpose in a permanent STANDING ARMY, and a MILITIA that may be subjected to as strict discipline and government.

3.11.51 A standing army in the hands of a government placed so independent of the people, may be made a fatal instrument to overturn the public liberties; it may be employed to enforce the collection of the most oppressive taxes, and to carry into execution the most arbitrary measures. An ambitious man who may have the army at his devotion, may step up into the throne, and seize upon absolute power.

The absolute unqualified command that Congress have over the militia may be made instrumental to the destruction of all liberty, both public and private; whether of a personal, civil or religious nature.

3.11.52 First, the personal liberty of every man probably from sixteen to sixty years of age, may be destroyed by the power Congress have in organizing and governing of the militia. As militia they may be subjected to fines to any amount, levied in a military manner; they may be subjected to corporal punishments of the most disgraceful and humiliating kind, and to death itself, by the sentence of a court martial: To this our young men will be more immediately subjected, as a select militia, composed of them, will best answer the purposes of government.

3.11.53 Secondly, The rights of conscience may be violated, as there is no exemption of those persons who are conscientiously scrupulous of bearing arms.[21] These compose a respectable proportion of the community in the state. This is the more remarkable, because even when the distresses of the late war, and the evident disaffection of many citizens of that description, inflamed our passions, and when every person, who was obliged to risque his own life, must have been exasperated against such as on a,y account kept back from the common danger, yet even then, when outrage and violence might have been expected, the rights of conscience were held sacred.

At this momentous crisis, the framers of our state constitution made the most express and decided declaration and stipulations in favour of the rights of conscience: but now when no necessity exists, those dearest rights of men are left insecure.

3.11.54 Thirdly, The absolute command of Congress over the militia may be destructive of public liberty; for under the guidance of an arbitrary government, they may be made the unwilling instruments of tyranny. The militia of Pennsylvania may be marched to New England or Virginia to quell an insurrection occasioned by the most galling oppression, and aided by the standing army, they will no doubt be successful in subduing their liberty and

independency; but in so doing, although the magnanimity of their minds will be extinguished, yet the meaner passions of resentment and revenge will be increased, and these in turn will be the ready and obedient instruments of despotism to enslave the others; and that with an irritated vengeance. Thus may the militia be made the instruments of crushing the last efforts of expiring liberty, of riveting the chains of despotism on their fellow citizens, and on one another. This power can be exercised not only without violating the constitution, but in strict conformity with it; it is calculated for this express purpose, and will doubtless be executed accordingly.

As this government will not enjoy the confidence of the people, but be executed by force, it will be a very expensive and burthensome government. The standing army must be numerous, and as a further support, it will be the policy of this government to multiply officers in every department: judges, collectors, tax-gatherers, excisemen and the whole host of revenue officers will swarm over the land, devouring the hard earnings of the industrious. Like the locusts of old, impoverishing and desolating all before them. 3.11.55

We have not noticed the smaller, nor many of the considerable blemishes, but have confined our objections to the great and essential defects; the main pillars of the constitution; which we have shewn to be inconsistent with the liberty and happiness of the people, as its establishment will annihilate the state governments, and produce one consolidated government that will eventually and speedily issue in the supremacy of despotism. 3.11.56

In this investigation, we have not confined our views to the interests or welfare of this state, in preference to the others. We have overlooked all local circumstances—we have considered this subject on the broad scale of the general good; we have asserted the cause of the present and future ages: the cause of liberty and mankind.

Nathaniel Breading,
John Smilie
Richard Baird
Adam Orth
John A. Hanna
John Whitehill
John Harris
Robert Whitehill
John Reynolds
Jonathan Hoge
Nicholas Lutz
John Ludwig,
Abraham Lincoln
John Bishop
Joseph Heister
Joseph Powel
James Martin
William Findley
John Baird
James Edgar
William Todd.

The yeas and nays upon the final vote were as follows, viz.

YEAS.

George Latimer
Benjamin Rush
Hilary Baker
James Wilson
Thomas M'Kean
William M'Pherson
John Hunn
George Gray
Samuel Ashmead

Enoch Edwards	Sebastian Graff	William Wilson
Henry Wynkoop	John Hubley	John Boyd
John Barclay	Jasper Yates	Thomas Scott
Thomas Yardley	Henry Slagle	John Nevill
Abraham Stout	Thomas Campbell	John Allison
Thomas Bull	Thomas Hartley	Jonathan Roberts
Anthony Wayne	David Grier	John Richards
William Gibbons	John Black	F. A. Muhlenberg
Richard Downing	Benjamin Pedan	James Morris
Thomas Cheyney	John Arndt	Timothy Pickering
John Hannum	Stephen Balliott	Benjamin Elliot
Stephen Chambers	Joseph Horsefield	
Robert Coleman	David Deshler	

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NAYS.

John Whitehill	John Bishop	James Edgar
John Harris	Joseph Heister	Nathaniel Breading
John Reynolds	James Martin	John Smilie
Robert Whitehill	Joseph Powell	Richard Baird
Jonathan Hoge	William Findley	William Brown
Nicholas Lutz	John Baird	Adam Orth
John Ludwig	William Todd	John Andre Hannah
Abraham Lincoln	James Marshall	

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Philadelphia, Dec. 12, 1787.

1. The eighth member was Benjamin Franklin, who had not been chosen at the first election because of doubt about his willingness to serve. See the reply by some of the majority to the "Address of the Minority of the Assembly," McMaster and Stone 79–83.

2. McMaster and Stone 65–71; see Pennsylvania House Minority above 3.2.3.

3. Constitution of Pennsylvania, 1776, sec. 47; Thorpe, *Federal and State Constitutions* V, 3091–92. See "Minutes of the Council of Censors, 1783–1784," *Pennsylvania Archives* 3d series, X (1896), 785 ff.

4. This is presumably the argument referred to by Publius when he claims that the enemies of the proposed Constitution question "that fundamental principle of republican government, which admits the right of the people to alter or abolish the established constitution whenever they find it inconsistent with their happiness. . . ." *The Federalist* no. 78, 527. Note however that the Minority of the Pennsylvania Convention does not make the argument Publius attributes to it and that Publius himself is here cautioning against ill-considered change.

5. This proposal is criticized by Publius in *The Federalist* no. 83, 563–68.

6. See the penetrating discussion by America (Noah Webster) of the difficulties of defining and applying a guarantee of freedom of the press. The New York *Daily Advertiser* 31 December 1787, reprinted in Webster's *Collection of Essays* (1790).

7. America gleefully shows how irrelevant this proposal is in free America, where every man is lord of this own land, and how much it derives from the "feudal tyranny" of Europe. Ibid.

8. McMaster and Stone 220. This is Wilson's speech at the Pennsylvania ratifying convention, given on 24 November 1787.

9. McMaster and Stone 225. Exactly the same portions of the speech are quoted by Centinel V, 2.7.94.

10. Cf. *The Federalist* on taxation, especially nos. 32 and 33. The question of concurrent taxation was of course very widely discussed. See McMaster and Stone 260 (Whitehill), 268–69 (Smilie); for other citations see Federal Farmer III, 2.8.39 n. 29.

11. Wilson in Pennsylvania Convention, McMaster and Stone 308; see also Ford, *Essays* 45–46 (Cassius), and *The Federalist* no. 33, 207. On the Anti-Federal side see Centinel V, 2.7.97, and Federal Farmer IV, 2.8.49; the latter, in criticizing the absence of this language from the treaty-making power, seems to imply that it does restrict the authority of Congress.

12. Cf. the argument following and Centinel V, 2.7.99.

13. This argument was made frequently, but the reference here is doubtless to James Wilson in his influential speech of 6 October and in the Pennsylvania convention; see McMaster and Stone 147, 264; for other citations see Centinel II, 2.7.36 n. 16. For an argument similar to the one here see Republican Federalist 4.13.23, 26. The deeper Anti-Federal reply is not that Congress will usurp the state's elective roles but that participation of that kind is not sufficient to maintain the states as truly significant parts of the federal republic. See Federal Farmer X, 2.8.132 n. 84.

14. *The Spirit of Laws* II, ch. 2. The same compressed version of Montesquieu's statement is used by Centinel (III, 2.7.73).

15. A Freeman replied that "tho' the convention propose that it should be the act of the people, yet it is in their capacities as citizens of *the several members of our confederacy*—for they are expressly declared to be the people of *the United States*—to which idea the expression is *strictly* confined, and the *general* term of *America*, which is constantly used in speaking of us *as a nation*, is carefully omitted; a pointed view was evidently had to our *existing union*." *Pennsylvania Gazette* 23 January 1788. Cf. Henry's denunciation of the language of the preamble, 5.16.1, and the discussion in the North Carolina ratifying convention Elliot IV, 15–16, and McMaster and Stone 256–57 (Whitehill).

16. Cf. *The Federalist* nos. 35–36; see Federal Farmer II, 2.8.15 n. 11.

17. See Publius' ingenious, and in its implications profound, contention that the balance of interest will be such that representation will be increased, *The Federalist* no. 58, 392–95. For other Federalist discussions of this question see Federal Farmer X, 2.8.137 n. 88.

18. The source of this quotation has not been found. See above, Democratic Federalist 3.5.6 n. 6.

19. *Commentaries* III, 380–81. I do not find the discussion of Scottish proceedings.

20. Montesquieu, *The Spirit of Laws* XI, ch. 6.

21. See Centinel III, 2.7.76 n. 39.

Essays by William Penn

(PHILADELPHIA) INDEPENDENT GAZETTEER
2 and 3 January 1788

These thoughtful essays are interesting partly for the general principles of government stated at the outset, but more especially for the discussion of the principle of the division of power in a democracy. "William Penn" emphatically accepts democracy, or government of the people, as the only government under which liberty can be attained or preserved (3.12.11). He examines the need in such a government for a division of power, the first and most natural being between the legislative and executive branches (3.12.13–14). He argues against giving the executive a negative or any other control over the legislative (3.12.15). He finds his argument supported by the principles, though not always the practice, of the state constitutions, the book of which is second only to the Bible in its store of eternal truths (3.12.16–18).

I

To the Citizens of the United States.

Fellow Citizens,

3.12.1 At this important moment which is to decide on your future happiness or misery by the adoption or rejection of the *new proposed form of government*, a cool and dispassionate investigation of that system becomes indispensably necessary—I have waited for a considerable time, hoping that the subject would be taken up by some abler pen than mine—I have been disappointed in my expectation—a great many pieces have indeed appeared, which have thrown a considerable light on this interesting subject, but they have been mostly of the desultory kind, and no person (at least that I know of) has as yet attempted a methodical examination of the proposed constitution, or a comparative view of its principles with the principles of a government in general, and of a *federal* government in particular—Although

I am greatly deficient in the necessary abilities, I have however undertaken the arduous task; and I propose, in this and the ensuing papers, to go through it in the best manner I am able, and without attempting to display any ornament or elegance of style, I shall endeavour to explain my ideas with clearness and simplicity—my sole object is to be understood, and to render (if possible) these observations as useful, as their subject is interesting.

I shall in the first place lay down general principles, and proceed afterwards to their applications. I shall make very few quotations, from political writers, and take very few examples from the government of other countries whether ancient or modern—truth needs nothing but itself to enforce conviction on unprejudiced minds, and principles are a thousand times above precedents. 3.12.2

I shall therefore begin with examining into the nature of government in general. 3.12.3

Government in its general sense may be defined *a human institution by which certain powers are delegated by the people to one or more citizens to preserve their national existence, and secure to each individual, the enjoyment of his natural rights:* otherwise, in the words of the constitution of Massachusetts, It is *a social compact by which the whole people convenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good.*[1]

Government was originally instituted for the benefit of mankind—The welfare of the community is the great end which, under every form, it is intended to obtain—but what is the best form of government has long been an object of dispute among the learned and speculative. It is not true that that government is best which is best administered—it is a sophism invented by tyranny to quiet the inquisitive mind; a good administration is at best but a temporary palliative to a bad government, but it does not alter its nature, any more than a bad man by doing one good action in the course of his life, ceases to be a bad man.[2] The best government is certainly that which is the least liable to be ill administered, in which the rulers have the most power to do good and the least to do evil. In other words it is that in which the natural rights of mankind are the most inviolably secured. 3.12.4

And of consequence as liberty is the most essential of those rights, which man holds by inheritance from all-bountiful nature, that which takes from him the least share of that liberty ought to be the best—for the same principle holds in the political as in the mechanical science, and that machine in either must be allowed to be the most perfect, which with the least *strength* performs the greatest *execution.* 3.12.5

But here a long agitated question will occur: *What is liberty?* What is that supreme good which every one feels, and so very few can define?—I would call it *the unlimited power of doing good,* and without very critically examining into this definition, I know not what internal voice tells me that I am 3.12.6

not mistaken. But again, What is good?—When that is fully known and understood, men will no longer differ about forms of government; it is the tree of knowledge which we have as yet only tasted; it is that we have for thousands of years, with various successes, been eagerly seeking after; it is the ultimate end of the painful researches of the human mind, and the object of these disquisitions.

3.12.7 Without going too deep into metaphysical investigations, that are no part of our present design, let us go back to the leading principle already established, that the best government is that which secures to the citizens the greatest share of their natural rights: their full extent unfortunately is not yet known to us; it is by slow, and often interrupted, steps that we have discovered those we now enjoy. That discovery is owing partly to our own sad experience, and partly to the philanthrophic researches of those chosen few to whom the Almighty has in his mercy bestowed a larger portion of the ethereal fire than usually falls to the lot of the common race of men. Those men, whom we call *philosophers* or *lovers of wisdom*, have generally been persecuted while they lived, and have had altars erected to them after their death. Because prejudice, supported by private interest, has always stood in the way of useful truths, which however have in the end seldom failed to prevail. And wherever a sufficient number of those truths has been established and generally diffused, liberty and happiness have become the portion of every nation so enlightened—liberty is the fair offspring of knowledge, as tyranny is the grim-child of ignorance.

3.12.8 In this respect America is of all other nations the most favored of Heaven—The book of the constitutions of the different states,[3] reflects such a mass of light as would have dazzled the greatest philosophers of antiquity. After the holy scriptures, it is certainly of all books that which contains the greatest store of eternal truths. I never open that sacred volume without feeling a kind of awful reverence, mixed with gratitude to the Almighty giver of all good gifts, who has been pleased to enlighten the minds of the legislators of this favored nation.

3.12.9 The truths which those great men have thus declared and established, are not (GOD be thanked) solely consigned to books made of perishable materials; they are deeply engraved in the hearts of every American. This nation may boast of enjoying the greatest collective store of political knowledge of any people on earth. Maxims of the utmost importance to the happiness of mankind, are familiar to our meanest citizens, which many eminent Philosophers in other parts of the world, have perhaps never had an idea of—hence it must be inferred, that if we are ever brought into slavery, we shall never be allowed the easy plea of ignorance: the nations that now envy us, will despise our meaness, and see our miseries without pity.

3.12.10 Let us therefore try this new federal constitution that is now offered to us by the light of our own knowledge—Let us recur to those original principles

upon which our present constitutions have been established. These guides never can mislead us; they are a sure touchstone to try any form of government by. If we find the federal plan conformable to those principles, let us by all means adopt it, and thereby secure perpetual happiness to ourselves and our posterity—If, on the contrary, we find that it is built on a different foundation, we must not hesitate a moment, but with a manly firmness, worthy of ourselves, unanimously reject it.

William Penn.

II

To the Citizens of the United States.

Fellow Citizens,

I shall now proceed to lay down the principles that I think necessary to the formation of a *free* government, and without which, I sincerely believe, no true liberty can exist. I shall not here take notice of the *scholastic* division of government into three kinds, to wit, *monarchy*, *aristocracy* and *democracy*, nor consider separately the nature and effects of each of these different species. At present I shall confine my enquiries entirely to a *democracy*, or *government, of the people*, which I am confident is the only one under which liberty can be obtained or preserved. The two other forms of government are so essentially different from it, that it is impossible they should have been intended to obtain the same, and which can never be done by following opposite roads. The *unity* of truth is as fixed and immutable a principle as that of the Divinity from whence it springs, and whose chief attribute it is. If so, no two opposite principles in government, any more than in any other science, can be equally founded upon it. Whether it was given to man to reach the source of the great fountain of truth, from which all true principles are derived, as rivers flow from the sea, it is not in my power to determine. We ought at least, with cautious and diffident steps, to approach it as nearly as we can, and treasure up and secure to ourselves and our posterity, the advantage of those *partial* truths, which the human mind is allowed to discover, waiting with confidence in HIM who constantly watches over his favorite creature *man*, and made him to be happy; for the blessed time when we shall perhaps discover the *grand principle*, which, when once found, it will not be in our power any more to tread the paths of error. Then, and not till then, may we expect to see the days foretold by the greatest philosopher of antiquity, when laws and government (their true principles being known to all the world) will be the same through all man- 3.12.11

kind. *Non erit lex alia Romae, alia Athenis, alia, nunc, alia posthac, sed et omni tempore, et apud omnes gentes, una eadem qua lex obtinebit.* Cic. Fragm. de Repub. [III, 22].

3.12.12 I believe that it is universally agreed upon in this enlightened country, that all power residing originally in the people, and being derived from them, they ought to be governed by themselves only, or by their immediate representatives. I shall not spend any time in explaining a principle so well and so generally understood, but I shall proceed immediately to that which I conceive to be the next in order.

3.12.13 The next principle, without which it must be clear that no free government can ever subsist, is the DIVISION OF POWER among those who are charged with the execution of it. It has always been the favorite maxim of princes, to *divide* the people, in order to *govern* them; it is now time that the people should avail themselves of the same maxim, and *divide* power among their rulers, in order to prevent their abusing it—The application of this great political truth, has long been unknown to the world, and yet it is grounded upon a very plain natural principle,—If, says Montesquieu, the same man, or body of men, is possessed both of the legislative and executive power, there is NO LIBERTY, because it may be feared that the same monarch, or the same *senate*, will enact tyrannical laws, in order to execute them in a tyrannical manner[4]—nothing can be clearer, and the natural disposition of man, to ambition and power, makes it probable that such would be the consequence—suppose for instance, that the same body, which has the power of raising money by taxes, is also entrusted with the application of that money, they will very probably raise large sums, and apply them to their own private uses; if they are empowered to create offices, and appoint the officers, they will take that opportunity of providing for themselves, and their friends, and if they have the power of inflicting penalties for offences, and of trying the offenders, there will be no bounds to their tyranny. Liberty therefore can only subsist, where the powers of government are properly *divided*, and where the different jurisdictions are inviolably kept distinct and separate.*

3.12.14 The first and most natural division of the powers of government are into the legislative and executive branches. These two should never be suffered to have the least share of each others jurisdiction, or to intermeddle with it

*I shall illustrate this doctrine by an example. A burgher of a certain borough of Switzerland was elected *Bailiff*, or Chief Magistrate, for one year, according to the constitution of the place. Shortly after his appointment, he sent for one of his neighbours, and ordered him to pull off his boots. The honest neighbour was astonished, and attempted to remonstrate, but the bailiff was determined to exert his authority, and threatened to send him to jail, if he did not yield him an immediate obedience. The poor man was forced to comply, for the bailiff was vested with power, both legislative and executive, he pulled off his worship's boots, but said to him, *"when I am appointed bailiff in my turn, you shall pull off my boots and clean them too."*[5]

in any manner. For which ever of the two divides its power with the other, will certainly be subordinate to it, and if they both have a share of each others authority, they will be in fact but one body; their interest as well as their powers will be the same, and they will combine together against the people.

3.12.15 It is therefore a political error of the greatest magnitude, to allow the executive power a negative, or in fact any kind of control over the proceedings of the legislature.[6] The people of Great Britain have been so sensible of this truth, that since the days of William III. no king of England has dared to exercise the negative over the acts of the two houses of parliament, to which he is clearly entitled by his prerogative.

3.12.16 This doctrine is not novel in America, it seems on the contrary to be every where well understood and admitted beyond controversy; in the bills of rights or constitutions of *New-Hampshire, Massachusetts, Maryland, Virginia, North-Carolina and Georgia*, it is expressly declared, "*That the legislative, executive and judicial departments, shall be forever separate and distinct from each other.*"[7] In *Pennsylvania* and *Delaware*, they are effectually separated without any particular declaration of the principle. In the other states indeed, the executive branch possesses more or less of the executive [legislative?] power—And here it must appear singular that the state of Massachusetts, where the doctrine of a separate jurisdiction is most positively established, and in whose bill of rights these remarkable words are to be found: "The executive shall never exercise the legislative and judicial powers, or either of them, to the end it may be a government of laws and not of men." (§30)[8] Yet in that commonwealth and New-Hampshire, the executive branch, which consists of a *single magistrate*, has more controul over the legislature than in any other state; for there, if the governor refuses his assent to a bill, it cannot be passed into a law, unless two-thirds of the house afterwards concur. In New-York the same power is given to a Council of Revision, consisting of the Governor, the Chancellor and Judges of the Supreme Court, or any three of them, of which the Governor is to be one. In Rhode-Island and Connecticut, whose governments were established before the revolution, the Governor has a single vote as a member of the upper house, and New-Jersey has adopted this part of their constitution. In Georgia the laws are to be revised by the Governor and Council, but they can do no more than give their opinion upon them. In Maryland the bills are to be signed by the governor before they can be enacted, and in South-Carolina they are to be sealed with the great seal, which is in the governor's custody. But in the first of these states, the constitution prescribes, that the governor *shall* sign the bills, and in the latter, a joint committee of both houses of legislature is to wait upon chief magistrate to receive and return the great seal, which implies that he is bound to deliver it to them, for the special purpose of affixing it to the laws of the state. Pennsylvania has proceeded upon a much more rational

ground, their legislature having a particular *seal* of their own, and their laws requiring only to be signed by the speaker. If in Maryland or South-Carolina a difference should ever arise between the legislature and the governor, and the latter should refuse to sign the laws, or to deliver the great seal, the most fatal consequences might ensue.

3.12.17 Here then we see the great leading principle of the *absolute division of the legislative from the executive jurisdiction,* admitted in almost every one of the American states as a fundamental maxim in the politics of a free country. The *theory* of this general doctrine is every where established, though a few states have somewhat swerved from it in the *practice*. From whence we must conclude, that even the knowledge and full conviction of a new political truth will not always immediately conquer inveterate habits and prejudices. The idea of the negative, which the constitution of England gives to the monarch over the proceedings of the other branches of parliament, although it has so long become obsolete, has had an effect upon timid minds, and upon the minds of those who could not distinguish between the *form* and *spirit* of the *British* constitution. They would not grant to the executive branch an absolute negative over the legislature, but yet they tried every method to introduce something similar to it. They reprobated the doctrine in the most express words, and yet they could not bear to part entirely with it. It is curious to observe how many different ways they have endeavored to conciliate truth with prejudice. Of those states who have allowed the executive branch to intermeddle with the proceedings of the legislature, no two (New-Hampshire and Massachusetts excepted) have done it exactly in the same manner. They have tried every possible medium, but having lost sight of the original principle which they had already established, and which alone could have been their safest guide, they groped about in the dark, and could not find any solid ground on which to establish a general rule. Like Noah's dove, being once out of the ark of truth, they could not find elsewhere a place to rest their feet.

3.12.18 These facts will no doubt afford an interesting page in the history of the contradictions of the human mind. Unfortunately, they do not stand single, and this is not the only instance that we find in the constitutions of the different states, of a general principle being expressly declared as a part of the natural rights of the citizens, and afterwards being as expressly contradicted in the practice. Thus we find it declared in every one of our bills of rights, "that there shall be a perfect liberty of conscience, and that no sect shall ever be entitled to a preference over the others."[9] Yet in Massachusetts and Maryland, all the officers of government, and in Pennsylvania the members of the legislature, are to be of the Christian religion; in New-Jersey, North-Carolina, and Georgia, the protestant, and in Delaware, the trinitarian sects, have an exclusive right to public employments; and in South-Carolina the constitution goes so far as to declare the creed of the established church. Virginia and New-York are the only states where there

is a perfect liberty of conscience. I cannot say any thing as to Connecticut and Rhode-Island, as their constitutions are silent on the subject, and I have not been informed of their practice.

Whether these religious restrictions are right or wrong it is not my intention, nor is it my object to examine in the course of these disquisitions—I only meant to shew, that in laying down a political system it is safer to rely on principles than upon precedents, because the former are fixed and immutable, while the latter vary with men, places, times and circumstances. 3.12.19

William Penn.

1. Massachusetts Constitution, 1780, preamble. In Thorpe, *Federal and State Constitutions* III, 1889.
2. See Federal Farmer I, 2.8.1 n. 3; Poplicola 4.11 n. 1.
3. *The Constitutions of the Several Independent States of America* Published by order of Congress (Philadelphia 1781). This volume went through several editions and reprintings.
4. Montesquieu, *The Spirit of Laws* XI, ch. 6.
5. The source of this anecdote has not been found.
6. In the original this sentence ends with a question mark.
7. This language adequately conveys the meaning of the various provisions, although it is a composite and does not appear in precisely this form in any of the state constitutions referred to. See Thorpe, *Federal and State Constitutions* II, 778; III, 1687, 1893; IV, 2457; V, 2787; VII, 3813.
8. Ibid. III, 1893.
9. Ibid. III, 1689, 1889; IV, 2454; V, 2788; VII, 3814.

Essay by Deliberator

(PHILADELPHIA) FREEMAN'S JOURNAL
20 February 1788

This essay and the next were written in reply to a series of three essays by A Freeman (written by Tench Coxe), contending that the government under the Constitution would not be a consolidation but a federal government.[1] The essay here by Deliberator is concerned with the *powers* of the general and state governments. The author rebuts some of A Freeman's claims and goes on to make sixteen assertions of his own about the powers granted under the new Constitution, the most striking of which are that under its power to regulate commerce Congress may authorize the importation of slaves, even in states where this trade is prohibited; that Congress may establish a uniformity of religion if it should think it for the "general welfare"; that Congress cannot increase the number of the House of Representatives; that no state may call forth its militia to suppress insurrection; and that no state can compel one of its citizens to pay a debt to a citizen of another state.

This essay may be regarded as a kind of preface to the essay by A [Pennsylvania] Farmer (below, 3.14), which provides a more penetrating and comprehensive examination of the arguments of A Freeman.[2]

1. While A Freeman is identified by Centinel as James Wilson ("James the Caledonian"—see Centinel XIII, 2.7.158), there is solid evidence that he was in fact Tench Coxe. See Harold Hutcheson, *Tench Coxe: A Study in American Economic Development* (Baltimore 1938) 65.

2. Two other essays over the pseudonym "*Deliberator*" appeared in the newspaper in the following two months, but these consisted entirely of lengthy extracts from Centinel. See Centinel IV, 2.7.79 n. 41.

Mr. Bailey,

3.13.1 A writer in the Pennsylvania Packet, under the signature of *A Freeman*,[1] has lately entered the lists as another champion for the proposed constitution; particularly he has endeavoured to shew that our apprehensions of this plan of government being a *consolidation* of the United States into one

government, and not a confederacy of sovereign independent states, is entirely groundless; and it must be acknowledged, that he has advocated this cause with as much shew of reason, perhaps, as the subject will admit.

The words *states, several states,* and *united states* are, he observes, 3.13.2
frequently mentioned in the constitution—and this is an argument that their separate sovereignty and independence cannot be in danger! He has enumerated a variety of matters which, he says, Congress cannot do, and which the states, in their individual capacity, must or may do, and thence infers their sovereignty and independence. In some of these, however, I apprehend he is a little mistaken.

(1.) "Congress cannot train the militia."—This is not strictly true; for by 3.13.3
the 1st Article they are empowered "to *provide* for organizing, arming and *disciplining*" them; and tho' the respective states are said to have the authority of training the militia, it must be "according to the discipline prescribed by Congress." In this business, therefore, they will be no other than subalterns under Congress, to execute their orders; which, if they shall neglect to do, Congress will have constitutional powers to provide for, by any other means they shall think proper. They shall have power to declare what description of persons shall compose the militia; to appoint the stated times and places for exercising them; to compel *personal* attendance, whether when called forth into actual service, or on other occasions, under what penalties they shall think proper, without regard to scruples of conscience, or any other consideration; their executive officer may march, and countermarch them from one extremity of the state to the other—and all this without so much as consulting the legislature of the particular states to which they belong! Where then is that boasted security against the annihilation of the state governments, arising from "the powerful military support" they will have from their militia?

(2.) "Congress cannot enact laws for the inspection of the produce of the country."—Neither is this strictly true. The power "to regulate commerce with foreign nations and among the several States, and to *make* all laws which shall be necessary and proper for carrying this power (among others vested in them by the constitution) into execution," most certainly extends to the enacting of inspection laws. The particular states may indeed propose such laws to them; but it is expressly declared, in the 1st article, that "all such laws shall be subject to the revision and *controul* of the Congress."

(3.) "The several states can . . . prohibit or impose duties on the importation of slaves into their own ports"—Nay, not even this can they do, "without the consent of Congress," as is expressly declared in the close of the 1st article. The duty which Congress may, and it is probable will lay on the importation of slaves, will form a branch of their revenue; but his impost, as well as all others, "must be *uniform* throughout the United States"; Congress therefore *cannot* consent that one state should impose an additional duty on this *article of commerce*, unless all the other states should do the

same; and it is not very likely that *some* of the states will ever ask this favour.

(4.) "Congress cannot interfere with the opening of rivers and canals; the making or regulation of roads, except post roads; building bridges; erecting ferries; building light-houses, etc."—In one case, which may very frequently happen, this proposition also fails; for if the river, canal, road, bridge, ferry, etc. be common to two states, or a matter in which they may be both concerned, and consequently must both concur, then the interference and consent of Congress becomes absolutely necessary; since it is declared in the constitution that "no State shall, without the consent of Congress, enter into any *agreement* or *compact* with another State."

(5.) "The elections of the President, Vice President, senators and representatives are exclusively in the hands of the States—*even as to filling vacancies.*" This, in one important part, is not true—for, by the 2d article, "in case of the removal of the President from office, or of his death, resignation, or inability to discharge the duties of the said office, the same shall devolve on the Vice-President, *and the Congress may by law provide for the case of removal, death, etc. both of the President and Vice President,* declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected; but no such election is provided for by the constitution, till the return of the periodical election, at the expiration of the *four years* for which the former president was chosen. And thus may the great projects of this supreme magistrate of the United States be exercised, *for years together*, by a man who, perhaps, never had one vote of the people for any office of government in his life.

(6.) "Congress cannot interfere with the constitution of any state."—This has been often said, but alas! with how little truth! since it is declared in the 6th article that "this constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties, etc. shall be the supreme law of the land, and *every state*, shall be bound thereby—any thing in the *constitution* or laws of any state to the contrary notwithstanding."

3.13.4 But, sir, in order to form a proper judgment of the probable effects of this plan of general government on the sovereignties of the several states, it is necessary also to take a view of what Congress *may*, constitutionally, do, and of what the states *may* not do. This matter, however, the above writer has thought proper to pass over in silence: I would therefore beg leave, in some measure, to supply this omission, and if in any thing, I should appear to be mistaken I hope he will take the same liberty with me that I have done with him—he will correct my mistake.

3.13.5 1. Congress may, even in time of peace, raise an army of 100,000 men, whom they may canton through the several states, and billet out on the inhabitants, in order to serve as necessary instruments in executing their decrees.

2. Upon the inhabitants of any state proving refractory to the will of Congress, or upon any other pretence whatsoever, Congress may call out even all the militia of as many states as they think proper, and keep them in actual service, without pay, as long as they please, subject to the utmost rigor of military discipline, corporal punishment, and death itself not excepted.

3. Congress may levy and collect a capitation or poll tax, to what amount they shall think proper; of which the poorest taxable in the state must pay as much as the richest.

4. Congress may, under the sanction of that clause in the constitution which empowers them to regulate commerce, authorize the importation of slaves, even into those states where this iniquitous trade is, or may be prohibited by their laws or constitution.

5. Congress may, under the sanction of that clause which empowers them to lay and collect *duties* (as distinct from imposts and excises) impose so heavy a stamp-duty on newspapers and other periodical publications, as shall effectually prevent all necessary information to the people through these useful channels of intelligence.

6. Congress may, by imposing a duty on foreigners coming into the country, check the progress of its population; and after a few years they may prohibit altogether, not only the emigration of foreigners into our country, but also that of our own citizens to any other country.

7. Congress may withhold, as long as they shall think proper, all information respecting their proceedings from the people.

8. Congress may order the elections for members of their own body, in the several states, to be held at what times, in what places, and in what manner they shall think proper. Thus, in Pennsylvania, they may order the elections to be held in the middle of winter, at the city of Philadelphia; by which means the inhabitants of nine tenths of the state will be effectually (tho constitutionally) deprived of the exercise of their right of suffrage.

9. Congress may, in their courts of judicature, abolish trial by jury, in civil cases, altogether; and even in criminal cases, trial by a jury of the vicinage is not secured by the constitution—A crime committed at Fort-Pitt may be tried by a jury of the citizens of Philadelphia.

10. Congress may, if they shall think it for the "general welfare," establish an uniformity in religion throughout the United States. Such establishments have been thought necessary, and have accordingly taken place in almost all the other countries in the world, and will, no doubt, be thought equally necessary in this.

11. Though I believe it not generally so understood, yet certain it is, that Congress may emit *paper money*, and even make it a legal tender throughout the United States, and, what is still worse, may, after it shall have depreciated in the hands of the people, call it in by taxes, at any rate of depreciation (compared with gold and silver) which they may think proper.

For though no state can emit bills of credit, or pass any law impairing the obligation of contracts, yet the Congress themselves are under no constitutional restraints on these points.

12. The number of representatives which will compose the principal branch of Congress is so small as to occasion general complaint; Congress, however, have no power to encrease the number of representatives, but may reduce it even to one fifth part of the present arrangement.

13. On the other hand—No state can call forth its militia even to suppress any insurrection or domestic violence which may take place among its own citizens—This power is, by the constitution, vested in Congress.

14. No state can compel one of its own citizens to pay a debt due to a citizen of a neighbouring state. Thus a Jersey-man will be unable to recover the price of a turkey, sold in the Philadelphia market, if the purchaser shall be inclined to dispute, without commencing an action in one of the federal courts.

15. No state can encourage its own manufactures either by prohibiting, or even laying a duty on the importation of foreign articles.

16. No state can given relief to insolvent debtors, however distressing their situation may be; since Congress will have the exclusive right of establishing uniform laws on the subject of bankruptcies throughout the United States; and the particular states are expressly prohibited from passing any law impairing the obligation of contracts.

Deliberator.

1. The three essays by A Freeman appeared in the *Pennsylvania Gazette* 23 January, 30 January, 6 February 1788; and in the *Pennsylvania Packet* 25 January, 31 January, and 7 February 1788. Addressed to the Minority of the Convention of Pennsylvania, they were a sober attempt to show that the states and their governments were necessary to the execution of the new Constitution itself; that the states were left with vast powers, far exceeding those of any mere administrative subdivisions; and that the Constitution was not intended to and would not in fact result in an entire consolidation of the United States into one government.

The Fallacies of the Freeman Detected by A Farmer

(PHILADELPHIA) FREEMAN'S JOURNAL
April 1788

This essay by A [Pennsylvania] Farmer is a good, strongly argued piece, more theoretical than most of the Anti-Federalist essays, and containing a substantial discussion of the principles of true federalism, largely patterned after Montesquieu. Like Deliberator, this author is replying to the essays of A Freeman (Tench Coxe), which contend that the new Constitution provides for a genuine federal government.[1] The main argument is that a truly federal republic is one in which the constituent parts exercise sovereign powers, but that the states under the Constitution will exercise only ministerial powers. A Farmer divides his essay into six parts. He explains "the nature of sovereignty" (3.14.2–5), "of a federal republic" (3.14.6–8), and "of a consolidated government" (3.14.9–10). His scheme then calls for discussions of "the nature of ministerial agency" and the "address to the minority," which are treated somewhat less systematically in the course of an examination of the powers of the federal government under the new Constitution (3.14.11–13) and the powers left to the states (3.14.14–19). The essay ends with some general observations on the unwisdom of relying on the virtue of rulers, on the illegal character of the proceedings and proposals of the Philadelphia Convention, and on the haste and impropriety of Federalist activities in Pennsylvania and elsewhere.

Like several of the Pennsylvania Anti-Federalist pieces, A Farmer's essay appeared almost simultaneously in the *Freeman's Journal* (16 April and 23 April 1788) and the *Independent Gazetteer* (18 April and 22 April 1788). It is reprinted here from the former.

1. See above, Deliberator 3.13 intro. n. 1.

Some weeks since there was published in the Carlisle Gazette an Address to the Minority of the late Convention of this State, under the signature of a *Freeman*, which I then supposed had been written by some well-meaning person of that place, who had not yet entered the porch of political knowl- 3.14.1

edge, who was unacquainted with the nature of sovereignty, and incapable of distinguishing ministerial agency from the exercise of sovereignty; I therefore took no especial notice of it, until happening to see a Philadelphia Newspaper, I found the Address had originated there, and was ascribed to a gentleman who is far from being ignorant, as I had candidly supposed the author to be, but who hath habituated himself to presume much upon the supposed ignorance of the people, and whose expectations of future support and grandeur hath probably been very influential in framing and promoting the proposed system of government:[1]—Upon this discovery, I read the Address again with more attention, and resolved to communicate, thro' your useful paper, the result of my observations thereon. I do not, however, design to answer the Address in detail, but to establish and explain such general principles as may assist people in judging for themselves, and have a tendency to detect the sophistry which characterises the performance. In order to do this, I shall explain,

First, The NATURE of SOVEREIGNTY.

Second, Of a FEDERAL REPUBLIC.

Third, Of a CONSOLIDATED GOVERNMENT.

Fourth, The NATURE of MINISTERIAL AGENCY.

Fifth, Examine the ADDRESS to the MINORITY (the occasion of these Enquiries.)

Sixth, Conclude with some GENERAL OBSERVATIONS on the TIMES.

3.14.2 I return to the *first* then: From the very design that induces men to form a society that has its common interests and to promote and secure which it ought to act in concert, it is necessary that there should be established a public authority, to order and direct what ought to be done by each individual as he stands in relation to the society itself, or to the individual members thereof; and this public authority consisting of that portion of natural liberty which each member surrenders to the society to be exercised for the common advantage, is the sovereignty which is often called political authority. If this sovereignty or political authority be vested in and exercised by the whole people, as in some of the ancient republics, or if it be delegated to representatives chosen by the people from among themselves, as in modern times, the government is called a democracy. If on the contrary the sovereignty be in a particular class of citizens who have not a common interest with the people at large, or body of the nation, it is called an aristocracy;[2] and if in a single person, a monarchy or despotism; and these three kinds may be variously combined and modified as in the British government and others, but every nation that governs itself by its own laws, let the form of government be what it may, is a sovereign state.

3.14.3 Sovereignty therefore consists in the understanding and will of the political society, and this understanding and will is originally and inherently in the people; the society having rested it where and in what manner it pleases, he or they to whom it is delegated is the sovereign and is thus vested with the

political understanding and will of the people for their good and advantage solely.

3.14.4 The power of making rules or laws to govern or protect the society is the essence of sovereignty, for by this the executive and judicial powers are directed and controuled, to this every ministerial agent is subservient, and to this all corporate or privileged bodies are subordinate: this power not only regulates the conduct, but disposes of the wealth and commands the force of the nation. To keep this sovereign power therefore in due bounds hath fundamental laws, which we call constitutions and bills of rights, been made and declared. Scarcely hath the wisdom of man, matured by the experience of ages, been able with all the checks, negatives and balances either of ancient or modern invention to prevent abuses of this high sovereign authority.

3.14.5 Here I may possibly be misunderstood; it may perhaps be objected, that in Great Britain the *King* is called the Sovereign, and that he is an executive and not legislative officer. True, the King of Great Britain is the Supreme Executive of the nation, but it is not this alone that constitutes him a Sovereign; he hath a negative over the Legislative, the laws are made by and with his consent, and are called the King's Laws; he calls, prorogues and dissolves his Parliament when he pleases; the Parliament indeed so manage, that the necessity of the case obliges him to convene them frequently, but he is not obliged to do it by the Constitution; so that, properly speaking, it is the King and Parliament of Great Britain which is sovereign.—However, if the Legislative authority were to be distributed in various portions, that man, or body of men, who should be vested with the sole and uncontrouled power of taxation, would eventually become the Sovereign, for whoever can command our whole property has the means in his power of ruling us as he pleases, because (as Montesquieu says) "sovereignty necessarily follows the power of taxation. ["][3]

(*To be Continued.*)

(*Continued from our last.*)

3.14.6 *Secondly*. I shall proceed to define a FEDERAL REPUBLIC:— A Federal Republic is formed by two or more single or consolidated republics, uniting together by a perpetual confederacy, and without ceasing to be distinct states or sovereignties; they form together a federal republic or an empire of states. As individuals in a state of nature surrender a portion of their natural liberty to the society of which they become members, in order to receive in lieu thereof protection and conveniency; so in forming a federal republic the individual states surrender a part of their separate sovereignty to the general government or federal head, in order that, whilst they respectively enjoy

internally the freedom and happiness peculiar to free republics, they may possess all that external protection, security, and weight by their confederated resources, that can possibly be obtained in the most extended, absolute monarchies.[4]

3.14.7 The peculiar advantages and distinctive properties of a federal republic are, that each state or member of the confederation may be fully adequate for every local purpose, that it may subsist in a small territory, that the people may have a common interest, possess a competent knowledge of the resources and expenditures of their own particular government, that their immediate representatives in the state governments will know and be known by the citizens, will have a common interest with them, and must bear a part of all the burdens which they may lay upon the people, that they will be responsible to the people, and may be dismissed by them at pleasure; that therefore the government would be a government of confidence and possess sufficient energy without the aid of standing armies, that the collectors of the revenue would at least have the bowels of citizens, and not be the offscourings of Europe, or other states who have no interest in, or attachment to the people; that if one or more of the states should become the prey of internal despotism, or foreign foes, the other states may remain secure under the protection of their own state government; that if some popular and wealthy citizen should have influence enough to attempt the liberties of one state, he might be stopped in his career by the interposition of the others, for his influence could not be equally great in all the states; that if the general government should fail, or be revised or changed, yet the several state governments may remain entire to secure the happiness of the citizens; and that the members of a confederated republic may be encreased to any amount, and consequently its external strength without altering the nature of the government, or endangering the liberty of the citizens.

3.14.8 The perfection of a federal republic consists in drawing the proper line between those objects of sovereignty which are of a general nature, and which ought to be vested in the federal government, and those which are of a more local nature and ought to remain with the particular governments; any rule that can be laid down for this must vary according to the situation and circumstances of the confederating states; yet still this general rule will hold good, viz. that all that portion of sovereignty which involve the common interest of all the confederating states, and which cannot be exercised by the states in their individual capacity without endangering the liberty and welfare of the whole, ought to be vested in the general government, reserving such a proportion of sovereignty in the state governments as would enable them to exist alone, if the general government should fail either by violence or with the common consent of the confederates; the states should respectively have laws, courts, force, and revenues of their own sufficient for their own security; they ought to be fit to keep house alone if necessary;

if this be not the case, or so far as it ceases to be so, it is a departure from a federal to a consolidated government; and this brings me to the next particular, which is to shew what is meant by a consolidated government.[5]

Thirdly. The idea of a CONSOLIDATED GOVERNMENT is easily understood, 3.14.9
where a single society or nation forms one entire separate government, and possess the whole sovereign power; this is a consolidated or national government. Whether a government be of a monarchical, aristocratical or democratical nature, it doth not alter the case, it is either a federal or a consolidated government, there being no medium as to kind.—The absoluteness of a despotic sovereignty is often restricted by corporate bodies, who are vested with peculiar privileges and franchises—and by a just distribution of the executive and ministerial powers; but although these may contribute to the happiness of the people, yet they do not change the nature of the government. Indeed, monarchies can never form a federal government; they may enter into alliances with each other; for monarchy cannot be divested of a competent proportion of sovereignty to form a general government without changing its nature. It is only free republics that can completely and safely form a federal republic; I say free republics, for there are republics who are not free, such as Venice, where a citizen carrying arms is punished with instant death, and where even the nobles dare not converse with strangers, and scarcely with their friends, and are liable by law to be put to death secretly without trial—or Poland which, in much the same words that are expressed in the new system, is by a league with the neighbouring powers guaranteed to be forever independent and of a republican form; yet a writer of their own says, that the body of the people are scarcely to be distinguished from brutes; and again he says, we have reduced the people of our kingdom by misery to a state of brutes; they drag out their days in stupidity, &c.[6] Free republics are congenial to a federal republic. In order that a republic may preserve its liberty, it must not only have a good form of government, but it must be of small extent; for if it possess extensive territory, it would be ruined by internal imperfection. The authority of government in a large republic does not equally pervade all the parts; nor are the political advantages equally enjoyed by the citizens remote from the capital as by those in the vicinity; combinations consequently prevail among the members of the legislature, and this introduces corruption and is destructive of that confidence in government, without which a free republic cannot be supported; besides, the high influential trusts which must be vested in the great officers of state, would at particular times endanger the government, and are necessarily destructive of that equality among the citizens, which is the only permanent basis of a republic; in short, the diversity of the situation, habits, manners, and interests of the people in an extensive dominion, subjects the government to a thousand accidents, which would embarrass a republican government. The experience of nations and the nature of things,

sufficiently prove, that the government of a single person, aided by armies and controuling influence, is necessary to govern a large consolidated empire.

3.14.10 And on the other hand, if the territory be small, the republic is liable to be destroyed by external force, therefore, reason and observation points out a confederation of republics, as the only method to preserve internal freedom, together with external strength and respectability.—Small republics forming a federal republic on these principles, may be resembled to divers small ropes plaited together to make a large and strong one, if the latter is untwisted, the small ropes are still useful as such, but if the former are untwisted, they are reduced to hemp, the original state.

3.14.11 To apply these principles to our present situation without respect to the proposed plan of government; in order to render the federal government adequate to the exigencies of the confederating states, it is necessary not only that the general government should be properly constructed in its forms, but that it should be vested with powers relative to all the federal objects of government, these objects are not only the powers of making peace and war, &c. but also with the power of making treaties respecting commerce, regulating and raising revenues therefrom, &c. to make requisitions of money when necessity requires it, from each of the states, and a certain well described power of compelling delinquent states to pay up their quota of such requisitions. Perhaps if each state had its own share of the domestic debt quotaed, so as they might each pay their own citizens, the general revenues would be sufficient for the other demands of the union in times of peace, if the government itself be not made too expensive by too great a number of officers being created. Congress ought, however, to have all powers which cannot be exercised by one state, without endangering the other states, such as the power of raising troops, treating with foreign nations, &c.—The power of levying imposts, will, by the particular states, be irregularly exercised, and the revenue in a great degree lost or misapplied, therefore, it ought not to be left with the states, but under proper checks, vested in the general government. All these the minority were amongst the foremost willing to have vested in the federal head, and more than this, had never been asked by Congress, nor proposed by the greatest advocates for congressional power, nor is more than this consistent with the nature of a federal republic. When the existing confederation was adopted, powers were given with a sparing hand, and perhaps, not improperly at that period, until experience should point out the discriminating line with sufficient experience, well knowing that it is easy for a government to obtain an encrease of power when common utility points out the propriety, but that powers once vested in a government, however dangerous they may prove, are rarely recovered without bloodshed, and even that awful method of regaining lost liberty is seldom effectual. It is now however evident that the power of regulating commerce, being of a general nature, ought to belong to the

general government, and the burthen of debt incurred by the revolution hath rendered a general revenue necessary, for this purpose imposts upon articles of importation present themselves, not only as a productive source of revenue, but as a revenue for which the governments of the particular states are for well known reasons, imcompetent.—The danger of entrusting a government so far out of the people's reach as Congress must necessarily be, strongly impressed the public mind about four or five years since, but now a conviction of the advantage and probable safety of such a measure, pervades almost every mind, and none are more willing for putting it in operation, under proper guards, than the opposers of the new system; they are also willing to admit what the majority of the states may judge proper checks in the *form* of the general government, as far as those checks, or the distribution of powers and responsibility of those who be vested with those powers, may be consistent with the security of the essential sovereignty of the respective states. The minority of the convention[7] (who I really believe, in their address, express the serious sentiments of the majority of this state) opposed vesting such powers in Congress as can be most effectually exercised by the state governments in a full consistency with the general interests of the confederating states, and which, not being of a general nature, are not upon federal principles, objects of the federal government, I mean the power of capitation, or poll tax, by which the head, or in other words, the existence of every person is put in their power by the new system as a property, subject to any price or tax that may be judged proper; I do not mean to say that this implies the power of life and death, although it certainly implies the power of selling the property, or if none is to be had, of imprisoning or selling the person for a servant, who doth not chuse, or is not able to pay the poll tax; the minority also objected to vesting Congress with power to tax the property, real and personal of the citizens of the several states, to what amount, and in what manner it may please, without any check or controul upon its discretion; also to the unlimitted power over the excise; if this could extend only to spirituous liquors as is usual with us, the danger would be less, but the power of excise extends to every thing we eat, drink, or wear, and in Europe it is thus extensively put in practice. Under the term duties, every species of indirect taxes is included, but it especially means the power of levying money upon printed books, and written instruments.

The Congress, by the proposed system, have the power of borrowing money to what amount they may judge proper, consequently to mortgage all our estates, and all our sources of revenue. The exclusive power of emmitting bills of credit is also reserved to Congress. They have, moreover, the power of instituting courts of justice without tryal by jury, except in criminal cases, and under such regulations as Congress may think proper to decide, not only in such cases as arise out of all the foregoing powers, but in the other cases which are enumerated in the system. 3.14.12

3.14.13 The absolute sovreignty in all the foregoing instances, as well as several others not here enumerated, are vested in the general government, without being subject to any constitutional check or controul from the state governments.

3.14.14 It remains to examine the nature of the powers which are left with the states, and on this subject it is not necessary to follow *Freeman* through the numerous detail of particulars with which he confuses the reader. I shall examine only a few of the more considerable. The *Freeman* in his 2d Number, after mentioning in a very delusory manner divers powers which remain with the states, he says we shall find many other instances under the constitution which require or imply the existence or continuance of the sovereignty and severalty of the states; he as well as all the advocates of the new system, take as their strong ground the election of senators by the state legislatures, and the special representation of the states in the federal senate, to prove that internal sovereignty still remains with the states; therefore they say that the new system is so far from annihilating the state governments, that it secures them, that it cannot exist without them, that the existence of the one is essential to the existence of the other.[8] It is true that this particular partakes strongly of that mystery which is characteristic of the system itself; but if I demonstrate that this particular, so far from implying the continuance of the state sovereignties, proves in the clearest manner the want of it, I hope the other particular powers will not be necessary to dwell upon.

3.14.15 The state legislatures do not chuse senators by legislative or sovereign authority, but by a power of ministerial agency as mere electors or boards of appointment; they have no power to direct the senators how or what duties they shall perform; they have neither power to censure the senators, nor to supercede them for misconduct. It is not the power of chusing to office merely that designates sovereignty, or else corporations who appoint their own officers and make their own bye-laws, or the heads of department who chuse the officers under them, such as commanders of armies, &c. may be called sovereigns, because they can name men to office whom they cannot dismiss therefrom. The exercise of sovereignty does not consist in chusing masters, such as the senators would be, who, when chosen, would be beyond controul, but in the power of dismissing, impeaching, or the like, those to whom authority is delegated. The power of instructing or superceding of delegates to Congress under the existing confederation, hath never been complained of, altho' the necessary rotation of members of Congress hath often been censured for restraining the state sovereignties too much in the objects of their choice. As well may the electors who are to vote for the president under the new constitution, be said to be vested with the sovereignty, as the state legislatures in the act of chusing senators. The senators are not even dependent on the states for their wages, but in conjunction with the federal representatives establish their own wages. The

senators do not vote by states, but as individuals. The representatives also vote as individuals, representing people in a consolidated or national government; they judge upon their own elections, and, with the senate, have the power of regulating elections in time, place and manner, which is in other words to say, that they have the power of elections absolutely vested in them.

3.14.16 That the state governments have certain ministerial and convenient powers continued to them is not denied, and in the exercise of which they may support, but cannot controul the general government, nor protect their own citizens from the exertions of civil or military tyranny, and this ministerial power will continue with the states as long as two-thirds of Congress shall think their agency necessary; but even this will be no longer than two-thirds of Congress shall think proper to propose, and use the influence of which they would be so largely possessed to remove it.[9]

3.14.17 But these powers, of which the *Freeman* gives us such a profuse detail, and in describing which he repeats the same powers with only varying the terms, such as the powers of officering and training the militia, appointing state officers, and governing in a number of internal cases, do not any of them separately, nor all taken together, amount to independent sovereignty; they are powers of mere ministerial agency, which may, and in many nations of Europe, are or have been vested, as before observed, in heads of departments, hereditary vassals of the crown, or in corporations; but not that kind of independent sovereignty which can constitute a member of a federal republic, which can enable a state to exist within itself if the general government should cease.

3.14.18 I have often wondered how any writer of sense could have the confidence to avow, or could suppose the people to be ignorant enough to believe, that, when a state is deprived of the power not only of standing armies (this the members of a confederacy ought to be) but of commanding its own militia, regulating its elections, directing or superceding its representatives or paying them their wages; who is, moreover, deprived of the command of any property, I mean source of revenue or taxation, or what amounts to the same thing, who may enact laws for raising revenue, but who may have these laws rendered nugatory, and the execution thereof superceded by the laws of Congress. This is not a strained construction, but the natural operation of the powers of Congress under the new constitution; for every object of revenue, every source of taxation, is vested in the general government. Even the power of making inspection laws, which, for obvious conveniency, is left with the several states, will be unproductive of the smallest revenue to the state governments; for, if any should arise, it is to be paid over to the coffers of Congress;—besides, the words "to make all laws necessary and proper for carrying into execution the foregoing powers, &c." give, without doubt, the power of repelling or forbidding the execution of any tax law whatever that may interfere with or impede the exercise of

the general taxing power, and it would not be possible that two taxing powers should be exercised on the same sources of taxation without interfering with each other. May not the exercise of this power of Congress, when they think proper, operate not only to destroy those ministerial powers which are left with the states, but even the very forms? May they not forbid the state legislatures to levy a shilling to pay themselves, or those whom they employ, days wages? The state governments may contract for making roads (except post-roads) erecting bridges, cutting canals, or any other object of public importance; but when the contract is performed or the work done, may not Congress constitutionally prevent the payment? Certainly they may do all this and much more, and no man would have a right to charge them with breaking the law of their appointment. It is an established maxim, that wherever the whole power of the revenue or taxation is vested, there virtually is the whole effective, influential, sovereign power, let the forms be what they may: By this armies are procured, by this every other controuling guard is defeated. Every balance or check in government is only so far effective as it hath a controul over the revenue.

3.14.19 The state governments are not only destitute of all sovereign command of, or controul over, the revenue or any part of it, but they are divested of the power of commanding, or prescribing the duties, wages, or punishments of their own militia, or of protecting their life, property or characters from the rigours of martial law. The power of making treason laws is both a flower[10] and an important defence of sovereignty; it is relative to and inseparable from it; to convince the states that they are consolidated into one national government, this power is wholly to be assumed by the general government.[11] All the prerogatives, all the essential characteristics of sovereignty, both of the internal and external kind, are vested in the general government, and consequently the several states would not be possessed of any essential power, or effective guard of sovereignty.

3.14.20 Thus I apprehend, it is evident that the consolidation of the states, into one national government (in contradistinction from a confederacy) would be the necessary consequence of the establishment of the new constitution, and the intention of its framers—and that consequently the state sovereignties would be eventually annihilated, though the forms may long remain as expensive and burthensome remembrances, of what they were in the days when (although labouring under many disadvantages) they emancipated this country from foreign tyranny, humbled the pride, and tarnished the glory of royalty, and erected a triumphant standard to liberty and independence.

3.14.21 It is not my present object to decide, whether the government is a good or a bad one, it is only to prove in support of the minority, that the new system does not in reality, whatever its appearances may be, constitute a federal but a consolidated government.—From the distinguishing characteristics of these two kinds of government which I have stated, some assistance

perhaps may be derived in judging which of them would be most suitable to our circumstances, and the best calculated to promote and secure the liberty and welfare of these United States.

A few general observations shall conclude this essay. It is commonly said by the friends of the system, that the dangers which we point out are imaginary; that we ought to depend more upon the virtue of those who shall exercise those powers; that we talk as if we supposed men would be possessed of a daemon as soon as they should be vested with the proposed powers, &c. I shall in answer thereto join with a sensible reasoner in saying, that I will not abuse the new Congress until it exists, nor then until it misbehaves, nor then unless I dare; but it is a fact, that all governments that have ever been instituted amongst men, have degenerated and abused their power, and why we should conceive better of the proposed Congress than of all governments who have gone before us, I don't know; it is certainly incumbent on the supporters of this system, first to prove either that the uniform testimony of history, and experience of society, is false, or else that the new system will have the divine influence to inspire those who exercise the powers which it provides, with wisdom and virtue in an infallible degree. Surely the conduct of the framers and promoters of the new constitution, do not present mankind as more worthy of confidence now, than they have been in other periods of society. For proof of this let us examine facts. The legislature of the various states, elected members for a federal convention, without having authority for that purpose from their constituents; this gave no alarm, as necessity perhaps justified the measure, but how dangerous is the smallest precedent of usurped power, for the general convention when met, far out did the example—they were strictly bound by the law of their appointment to revise the confederation; the additional powers with which it ought to have been vested were generally understood, and would have been universally submitted to. This convention not only neglected the duty of their appointment, but assumed a power of the most extraordinary kind, they proceeded to destroy the very government which they were solemnly enjoined to strengthen and improve, and framed a system (to say no worse of it) that was destructive not only of the form, but of the nature of the government whose foundations were laid in the plighted faith and whose superstructure was cemented with the best blood of the United States. The legislature of this state, whose leading members were also self-chosen members of the general convention, no sooner had it in their power, than notwithstanding the solemn trust reposed in them, and still more solemn oath to preserve the constitution of this state inviolate, proceeded upon the expected last day of their session to call a convention, in order to adopt the proposed system of government before the people could be acquainted with it; and to carry this into execution, they added violence to perfidy, and by the aid of mob compelled members, sanctified by their presence, that usurped exertion of power, which their faith and trust obliged them to

3.14.22

discountenance. The consequence was, that about one-sixth of the citizens only obeyed the irregular call of the assembly, and elected members to the state convention: one-third of those members, and who were chosen by nearly one-half of the voters who did elect, voted against the adoption of the new constitution, and being refused the right of entering their testimony on the minutes, laid their conduct and their reasons before their constituents. About five out of six of the people, whether disdaining to obey a call which neither the general convention or assembly were authorised to make, or whether being taken by surprise, they were not sufficiently informed to act with decision, and therefore did not choose to act at all: I cannot tell, but so it is, that they have not yet publicly declared their sentiments for, nor have done any thing in favor of the proposed system: In this situation Pennsylvania hath adopted the system. It is a very serious question, whether supposing nine states had agreed to it in this manner, the system would be practicable, whether general confidence would not be necessary unless we had greater resources. In addition to Pennsylvania, Georgia, Delaware, New-Jersey, and Connecticut, have also adopted the system; these states are not only small, but in a high degree delinquent, and there is no provision made in the new constitution to compel delinquent states or persons to make up their deficiencies. The convention of Massachusetts have adopted the system with a solemn disapprobation, they have pointed out amendments on the same parchment with the act of ratification, and have solemnly enjoined those who may be the first deputies in the new Congress, to exert their every endeavours to have these amendments made part of the constitution, and to add weight to them, they have officially requested Pennsylvania and the other states to concur in the propositions of amendment. The New-Hampshire convention have, on motion of the friends of the system, adjourned until June, in order to prevent an immediate rejection, which otherwise was unavoidable, the adjournment was carried by only three voices. At present there is and will for some months be a solemn and serious pause, a time of deliberation, the result of which will fill an important page in the history of human society. For my own part I think the heaviest clouds are dispersed, and the gloomy darkness admits the chearing rays of hope, which promise meridian splendour to the sun of liberty. Most of those who were from the best motives friends to the system, have penetrated the shade of mystery in which it was wrapped, they see the snares, and discover the delusions with which it is replete, they see that every other system of government whether good or bad, is easy to be understood, but that this system excels all of the kind which hath come to their knowledge in darkness and ambiguity; they have been informed too, that this mysterious veil was the fruit of deliberation and design.

3.14.23 Whilst posts are prevented from carrying intelligence, whilst newspapers are made the vehicles of deception, and dark intrigue employs the avaricious office-hunters, who long to riot on the spoils of their country, the great

body of the people are coolly watching the course of the times, and determining to preserve their liberties, and to judge for themselves by the principles of reason and common sense, and not by the weight of names.

A Farmer.

1. The author is probably referring to Centinel, who attributed the essays of A Freeman to James Wilson, apparently incorrectly. See above, Deliberator 3.13 intro. n. 1.

2. Cf. Publius' definition of faction as "a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens or to the permanent and aggregate interests of the community." *The Federalist* no. 10, 57.

3. This passage has not been located in Montesquieu's writings.

4. James Wilson made arguments very much like this, in both the Constitutional Convention and the Pennsylvania ratifying convention. Farrand I, 166 (8 June) and McMaster and Stone 227. For other Federalist statements of this kind see Federal Farmer XVII, 2.8.204 n. 123. References to Anti-Federal opposition to consolidation are collected in A Plebeian 6.11.15 n. 9.

5. A Farmer adds usefully to the Anti-Federalist discussion of federalism with his notion of a capacity in the states to keep house alone, if necessary. Of course, the great difficulty remains of a possible conflict between this principle and the principle of resting the protection of the common interests on the general government. Cf. Brutus VI, 2.9.80 n. 56; Monroe 5.21.17 n. 8. For other Anti-Federalist discussion of the meaning of federalism see Federal Farmer 1, 2.8.10 n. 9.

6. John Adams, *Defence* I, letter 22 (*Works* IV, 373).

7. See above, 3.11.

8. A Freeman goes so far as to argue that "Every state can always give its dissent to foederal bills, as each has a *vote* in the Senate secured by the constitution. Hence it appears, that the State governments are not only intended to remain in force within their respective jurisdictions, but they are always to be known to, and to have their voices, *as states,* in the foederal councils." *Pennsylvania Gazette* 30 January 1788. For Federalist arguments that the states will not be destroyed see Centinel II, 2.7.36 n. 16.

9. See Federal Farmer X, 2.8.133 n. 84.

10. In their reprinting of this essay McMaster and Stone change this to "power" (McMaster and Stone 543), but both the *Freeman's Journal* and the *Independent Gazetteer* have "flower," which is probably what the author intended.

11. A Freeman assumes, on the contrary, that the states would continue to have the power to make treason laws. "So *independent* will the state governments remain, that their laws may, and in some instances will, be *severer* than those of the union. Treason against the United States, for instance, cannot be attended with confiscation and corruption of blood; but by the existing laws of all the states, the *unoffending families* of attainted persons, stripped of all hereditary rights, and condemned to the bitter portion of extreme poverty, are left without their friend and parent, to meet the trials of the world alone: An awful monument of the *sovereign and avenging power* of their native state. Let the Representative or senator who may meditate the annihilation of the government of his state duly consider this, before it be too late." *Pennsylvania Gazette,* 6 February 1788.

Essay by None of the Well-Born Conspirators

(PHILADELPHIA) FREEMAN'S JOURNAL
23 April 1788

None of the Well-Born Conspirators denies that the advocates of the new Constitution are "federalists" in the proper sense, though their use of the term, which can also mean "conspirators," ironically points to their true character, which is conspirators against the rights and privileges of the many.

3.15.1 In public disquisitions, especially political controversies, one of the parties generally adopt some *cant word or phrase*, whereby they may be distinguished from their opponents; and what renders the circumstance remarkably curious, the *word or phrase* is nineteen times out of twenty wrong applied. Thus in the party politics of Britain, under one administration *candor* was their *shibbolith*, when the most *abusive*, *uncandid*, and *dirty-mouthed* scoundrels in the kingdom were the favorites of *court;* under another, *economy*, was the watch-word, yet *profuseness* and *prodigality* in public concerns, was then at their *no plus ultra;* again *national honor*, was bazed about, when not a fragment of *honor*, *principle*, or even *national courage* could be traced at court; this was in Lord North's ever memorable administration. Now in an exact agreement with this plan, one of our American political parties, are incessantly bellowing out, *federalism*, *federal measures, federal gentlemen*, etc. etc.[1]

3.15.2 If the words, Federal, Federalism, etc. are to be taken in their general and common acceptations, as derived from Foedas, a league, or covenant, entered into for the mutual advantage of all; there cannot be found a greater abuse of words than in this instance; for our modern federalists, namely, the advocates of the new constitution, evidently aim at nothing but the elevation and aggrandizement of a few over the many. The *liberty*, *property* and every social comfort in life of the yeomanry in America, are to be sacrificed at the *altar* of tyranny. *Federalism* then taken in this sense must imply something very remote from its original natural import; it must, (and truly there is no help for saying it) signify a league entered into against the sacred liberties of

the people; that is in plain terms a conspiracy; and this is the fifth signification of the word Foedas, given by Ainsworth in his excellent Latin dictionary.[2] Perhaps the consciences of the conspirators in the *dark conclave* urged them to assume a name which might be in some measure a key to disclose their perfidy. Conscience is a stern arbiter, and often compels us to witness against ourselves. Accompanied by such a faithful monitor the abettors of despotism adopted an epithet that should, when perfectly understood, be the true index to their base intentions. Take the word Federalism directly or indirectly, and it amounts neither to more nor less in its modern acceptation than a conspiracy of the *Well-born few*, against the sacred rights and privileges of their fellow citizens.

None of the Well-Born Conspirators.

1. For other Anti-Federal discussions of the terms federalist and anti-federalist see Martin 2.4.43 n. 12; Federal Farmer I, 2.8.10 n. 9.

2. Robert Ainsworth, *Thesaurus Linguae Latinae Compendiarius: or, A Compendious Dictionary of the Latin Tongue* (London 1736).

The Government of Nature Delineated or An Exact Picture of the New Federal Constitution by Aristocrotis

Carlisle 1788

"The Government of Nature Delineated" is an exaggerated satire, yet there are several unusual and telling arguments. And if the essay's language, grammar, and spelling are crude, the mind behind it is keener than those behind some of the better-mannered pieces. Aiming at, although not himself of, the vulgar, Aristocrotis treats the theme of government "according to nature" as the Federalists see it; and he is particularly interesting on the issues of a natural aristocracy (3.16.3,5), the purposes of the congressional power to raise taxes (3.16.6–8), and religion (3.16.14–15). The piece was printed as a pamphlet in 1788 (in Carlisle, by Kline and Reynolds) apparently (from references in the appendix) in March or April.

Truth exists abstracted from the mind;
And nature's laws are laws tho' men be blind

Pope.[1]

Wisdom crieth aloud, and Understanding lifteth up her voice.

Bible.[2]

DEDICATION

To his serenity the right respectable, most honourable highly renowned J[AME]S W[ILSO]N, political hackney writer to the most lucrative order of the bank, patronee of the most illusstrious R[OBER]T M[ORRI]S, and principal fabricator of the New Constitution.

Sir,

As your distinguished docility to the well-born, and the partial friendship of the great man, your patron, hath lugged you into all the honorary missions and dignified appointments of the nation, these several years past, and turned the eyes of all the full-blooded gentry in America towards you, as the only person fitted by nature to organize the government upon true despotic principles, I therefore beg leave to offer this small sacrifice to your vanity (an innate virtue of all our fraternity), upon the altar of adulation. It is true, the unwearied assiduity, and indefatigable zeal with which you served your friends, and pushed forward the rising grandeur of our party hath procured you the hatred of the people; but you know, Sir, to be hated by the vulgar is a compliment to your understanding, a mark of honour. Let me congratulate you, illustrious sir, on the nigh prospect of having all your numerous lucubrations, unremitted studies, and well concerted schemes happily realized beyond your most sanguine expectations, as an ample reward for all your services and sufferings, the time of your deliverance draweth nigh; the reparation of your shattered fortune, and your emancipation from a state of servile dependance upon bankers and brokers is just at hand; the adoption of the constitution is making rapid progress, and it is hoped will soon receive the finishing stroke, and then sir, you may take an everlasting farewell of poverty. The great influx of treasure from every corner of the land, into the ten miles square, will fill your coffers, and if possible, satiate the cravings of your pecuniary appetite. Now, as in times past, you have been a willing instrument, and ready minion to others; so then, in their turn, others will cringe at your nod, and bow at your image, will beg and pray to participate a share of the pensions, perquisites, sinecures and salaries, with all the tribe of lucrative offices, which will then be at your disposal. 3.16.1

I would entreat you, dear sir, that when you arrive at the summit of your desires, you would deign to look back to your former condition, and make some provision for the relief of your insolvent brethen in time to come: that you would procure congress to constitute the *ten miles square* into a Sanctum-Sanctorum, a place of refuge for well born bankrupts, to shelter themselves and property from the rapacity of their persecuting creditors. You know, sir, in the capital of your native country, there is an asylum similar to this, of great utility to unfortunate debtors. As I have selected you from the whole group of illustrious names which embellished the new constitution, for the patron of my first essay, and have honoured you with this public dedication; it is to be hoped, when you come to your kingdom, you will remember these marks of respect—I remain, sir, with great solicitude for your elevation. 3.16.2

Aristocrotis.

3.16.3 The present is an active period; Europe is in a ferment breaking their constitutions, America is in a similar state, making a constitution—For this valuable purpose a convention was appointed, consisting of such as excelled in wisdom and knowledge, who met in Philadelphia last May. For my own part, I was so smitten with the character of the members, that I had assented to their production, while it was yet in embrio; and I make no doubt but every good republican did so too; but how great was my surprize, when it appeared with such a venerable train of names annexed to its tail, to find some of the people under different signatures; such as *Centinel, Old Whig, Brutus, etc.*, daring to oppose it, and that too with barefaced arguments, obstinate reason and stubborn truth. This is certainly a piece of the most extravagant impudence to presume to contradict the collected wisdom of the United States; or to suppose a body, who engrossed the whole wisdom of the continent, was capable of erring. I expected the superior character of the convention would have secured it from profane sallies of a plebeian's pen; and its inherent infaliability, debarred the interference of impertinent reason or truth. It was too great an act of condescension to permit the people, by their state conventions, "to assent and ratify," what the grand convention prescribed to them; but to enquire into its principles, or investigate its properties, was a presumption too daring to escape resentment. Such licentious conduct practised by the people, is a striking proof of our feeble governments, and calls aloud for the pruning knife, viz. the establishment of some proper plan of discipline. This the convention, in the depth of their united wisdom hath prescribed, which when established, will certainly put a stop to the growing evil. A consciousness of this, is, no doubt, the cause which stimulates the people to oppose it with so much vehemence; they deprecate the idea of being confined within their proper sphere; they cannot endure the thoughts of being obliged to mind their own business, and leave the affairs of government to those whom nature hath destined to rule. I say nature, for it is a fundamental principle, as clear as an axiom, that nature hath placed proper degrees and subordinations amongst mankind, and ordained a few* to rule, and many to obey.—I am not obliged

*If any person is so stupidly dull as not to discern who these few are, I would refer such to nature herself for information.—Let them observe her ways and be wise. Let them mark those men whom she hath endued with the necessary qualifications of authority; such as the dictatorial air, the magisterial voice, the imperious tone, the haughty countenance, the lofty look, the magestic mien. Let them consider those whom she hath taught to command with authority, but comply with disgust, to be fond of sway, but impatient of controul; to consider themselves as Gods and all the rest of mankind as two legged brutes. Now it is evident that the possessors of these divine qualities must have been ordained by nature to dominion and empire; for it would be blasphemy against her supreme highness to suppose that she confers her gifts in vain. Fortune hath also distinguished those upon whom nature hath imprinted the lineaments of authority. She hath heaped her favours and lavished her gifts upon

to prove this principal; because it would be madness in the extreme to attempt to prove a self-evident truth; but with all due submission to the infaliable wisdom of the grand convention, let me presume to examine whether they have not, in the new plan of government, inviolably adhered to this supreme principle.—The exhorbitant power, which the people of this country possess, of electing their rulers, is directly repugnant to this superlative principle of nature, and tends to the subversion of all order and good government; for they may and often do advance those men to be rulers, whom nature had ordained for subjects, and to neglect the natural rulers. This is a gross inversion of the law of nature, and ought to be cashiered; but the vulgar opinion is so strong in favour of this unnatural practice, that it would be dangerous to divest them of it all at once. It might enflame their turbulent minds, and excite them to commit some outrageous action, in support of what they have been taught to consider as their "natural, inherent, and unalienable rights."—The venerable convention foresaw this, and accomodated their plan to humour these mistaken notions of the people, so far as was consistent with the honour, dignity and rights of the more illustrious descended, whose title to rule is founded on the law of nature.

In article first, section first, of the new plan, it is declared, "that all legislative powers herein granted, shall be vested in a congress of the united states; which shall consist of a senate"—very right, quite agreeable to nature; "and house of representatives"—not quite so right—This is a palpable compliance with the humours and corrupt practices of the times—but what follows in section 2d is still worse: "the house of representatives shall be composed of members chosen every second year, by the people of the several states": this is a most dangerous power, and must soon produce fatal and pernicious consequences, were it not circumscribed and poised by proper checks and ballances: but in this is displayed the unparalleled sagacity of the august convention; that when such bulwarks of prejudice surrounded the evil, so as to render it both difficult and dangerous to attack it by assault and storm, they have invested and barricaded it so closely as will certainly deprive it of its baneful influence and prevent its usual incroachments;—they have likewise stationed their miners and sapers so judiciously, that they will certainly, in process of time, intirely reduce and demolish this obnoxious practice of popular election. There is a small thrust given to it in the body of the conveyance itself. The term of holding elections, is every two years; this is much better than the detestable mode of *annual* elections, so fatal to energy; however, if nothing more than this were done, it would still remain an insupportable inconvenience; but in section the 4th it is provided, that congress by law may alter and make such reg- 3.16.4

those very persons whom nature delighteth to honour: indeed instinct hath taught those men that authority is their natural right, and therefore they grasp at it with an eagerness bordering on rapacity.

ulations with respect to the times, places, and manner of holding elections, as to them seemeth fit and proper: this is certainly a very salutory provision, most excellently adapted to counter-ballance the great, and apparently dangerous concessions made to the plebians in the first and second sections, with such a prudent restriction as this they are quite harmless: no evil can arise from them, if congress have only the sagacity and fortitude, to avail themselves of the power they possess by this section: for when the stated term (for which the primary members was elected) is nigh expired, congress may appoint next election to be held in one place in each state; and so as not to give the rabble needless disgust, they may appoint the most central place for that purpose. They can never be at a loss for an ostensible reason, to vary and shift from place to place until they may fix it at any extremity of the state it suits. This will be the business of the senate, to observe the particular places in each state, where their influence is most extensive, and where the inhabitants are most obsequious to the will of their superiors; and there appoint the elections to be held. By this means, such members will be returned, to the house of representatives (as it is called) as the president and senate shall be pleased to recommend, and they, no doubt, will recommend such gentlemen only as are distinguished by some peculiar federal feature; so that unanimity and concord will shine conspicuous through every branch of government. This section is ingeniously calculated, and must have been intended by the convention to exterminate electioneering entirely; for by putting the time of election in the hands of congress, they have thereby given them a power to perpetuate themselves when they shall find it safe and convenient to make the experiment. For though a preceding clause says, "that representatives shall be chosen for two years, and senators for six years"; yet this clause being subsequent annuls the former, and puts it in the power of congress, (when some favourable juncture intervenes) to alter the time to four and twelve years. This cannot be deemed an unconstitutional stretch of power, for the constitution in express terms, puts the time of holding elections in their power, and certainly they are the proper judges when to exert that power: thus by doubling the period from time to time, its extent will soon be rendered coeval with the life of man; and it is but a very short and easy transition from this to hereditary succession, which is most agreeable to the institutions of nature, who in all her works, hath ordained the descendant of every species of beings to succeed its immediate progenitor, in the same actions, ends and order.

3.16.5 The indefatigable labourious ass, never aspires to the honours, or assumes the employment of the sprightly warlike steed, nor does he ever pretend that it is his right to succeed him in all his offices, and dignities, because he bears some resemblance to the defunct in his figure and nature. The lamma, though useful enough for the purposes for which he was intended by nature, is every way incompetent to perform the offices of the

elephant; nor does he ever pretend to usurp his elevated station. Every species of beings, animate and inanimate, seem fully satisfied with the station assigned them by nature; but perverse, obstinate man, he alone spurns at her institutions, and inverts her order,* he alone repines at his situation, and endeavours to usurp the station of his superiors. But this digression has led me from the subject in hand. I was treating of the powers congress possesses over elections. I have already discussed this point so far as the times and places are concerned. The next object that presents itself is the power which the new constitution gives to congress to regulate the manner of elections. The common practice of voting at present is by ballot; by this mode it is impossible for a gentleman to know how he is served by his dependant, who may be possessed of a vote; therefore this mode must be speedily altered for that of viva voce, which will secure to a rich man all the votes of his numerous dependants and friends and their dependants. By this means he may command any office in the gift of the people, which he pleases to set up for. This will answer a good end while electioneering exists; and will likewise contribute something towards its destruction. A government founded agreeable to nature must be intirely independant; that is, it must be beyond the reach of annoyance or controul from every power on earth. Now in order to render it thus, several things are necessary.

1st. The means of their own support must be within the immediate reach 3.16.6
of rulers: for this purpose they must possess the sole power of taxation. As this is a principal article, it ought, in all things to have pre-eminence; and therfore the convention has placed it in front. "The congress shall have power to lay and collect taxes [,] duties, imposts and excises," so that they shall never be at a loss for money while there is a shilling on the continent, for their power to procure it is as extensive as their desires; and so it ought, because they can never desire any thing but is good and salutary; for there is no doubt but the convention will transfer their infallability to the new congress, and so secure them from doing evil. This power of taxation will answer many valuable purposes, besides the support of government. In the first place, in the course of its operation, it will annihilate the relicks of the several state legislations; for every tax which they may lay, will be deemed by congress an infringement upon the federal constitution, which constitution and the laws of congress being paramount to all other authority, will of consequence nullify every inferior law, which the several states may think proper to enact, particularly such as relate to taxes; so that they being deprived of the means of existence, their pretended sovereignties will gradually linger away.

2dly. It will create and diffuse a spirit of industry among the people; they 3.16.7

*This is only to be understood of the inferior class of mankind; the superior order have aspiring feelings given them by nature, such as ambition, emulation, etc. which makes it their duty to persevere in the pursuit of gratifying these refined passions.

will then be obliged to labour for money to pay their taxes: there will be no trifling from time to time, as is done now; the new government will have energy sufficient to compel immediate payment.[3]

3.16.8 3dly. This will make the people attend to their own business; and not be dabbling in politics—things they are entirely ignorant of; nor is it proper they should understand. But it is very probable that the exercise of this power may be opposed by the refractory plebians, who (such is the perverseness of their natures) often refuse to comply with what is manifestly for their advantage; but to prevent all inconveniency from this quarter the congress have power to raise and support armies. This is the second thing necessary to render government independent. The creatures who compose these armies, are a species of animals, wholly at the disposal of government; what others call their natural rights they resign into the hands of their superiors, even the right of self-preservation (so precious to all other beings) they entirely surrender, and put their very lives in the power of their masters: so that they having no rights of their own to care for, they become naturally jealous and envious of those possessed by others, they are therefore proper instruments in the hands of government, to divest the people of their usurped rights. But the capital business of these armies will be, to assist the collectors of taxes, imposts, and excise, in raising the revenue; and this they will perform with the greatest alacrity as it is by this they are supported; but for this they would be in a great measure useless; and without this they could not exist.

3.16.9 4thly.[4] To render government entirely independent, they must have the sole and absolute command of the militia without restriction or reserve, either as to time or place, principle or conscience; and with this power the constitution hath amply furnished them—see article 1st sect. 8. "the congress shall have power to provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions, to provide for organising, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the united states." By this clause the militia is divided into two classes, viz. active and inactive; the active militia will be those employed "in the service of the united states," or in other words in the service of congress; they will consist of young men chiefly, who will not be attached to any particular place, on account of their families: or such eccentric genius's as by their superior address or daring spirit may gain an ascendency over the minds of the vulgar, and so become the heads of liberty factions.

3.16.10 Such persons as these will best suit the purpose of government; and if they are judiciously culled and picked, will compose a very respectable army; from which many great advantages may result to goverment. 1st. They will assist, in conjunction with the standing army, to quell insurrections that may arise in any part of the empire on account of pretensions to support liberty, redress grievances, and the like. 2dly. This

power will enable congress to fulfill their engagements with foreign nations, their allies; should they stipulate in the treaty of alliance, to furnish a number of troops (in consideration of a certain sum of money) to be employed in the service of these allies, when they are engaged in war, the active militia will always be ready. Such treaties as these will likewise grow into a lucrative branch of commerce: the Swiss Cantons find their accounts in a traffic somewhat similar, and the prince of Hesse Cassel, and other German princes who are excellent financiers, raise a great part of their revenues by such dealings.

3.16.11 Now, the very letter of the above quoted sections gives congress such a power as this; and in article 6th it is declared, "That all treaties made, or which shall be made under the authority of the united states; viz. by the president and two-thirds of the senators, [see art. 2d. sec. 2d][5] shall be the supreme law of the land." Another clause says, "that congress is to provide for calling forth the militia to execute the laws of the land"; therefore the militia, by virtue of these powers given to congress may be transported to Europe, Africa or Asia, to execute the treaties of congress, because they are the "supreme laws of the land." Although there is nothing in this constitution, but what bears an exact resemblance to nature, yet there is no feature or lineament in the whole portrait pleases me equal to this. It is nature itself in minature. With what heavenly ideas must the framers of these articles have been inspired; how artfully and ingeniously they have conveyed to congress the absolute disposal of their subjects. It is true they have reserved to the several states the business of training the militia, according to the discipline prescribed by congress. By this reservation, the states are constituted drill-sergeants and fuglemen to train up soldiers for the general government; an employment too mean and servile for the dignified congress; but every way suitable to the quality of the discarded states, or deposed sovereigns.

3.16.12 The second class or inactive militia, comprehends all the rest of the peasants; viz. the farmers, mechanics, labourers, etc. which good policy will prompt government to disarm. It would be dangerous to trust such a rabble as this with arms in their hands. They might employ them in opposing the supreme laws of the land instead of employing them to execute them. 4thly To render government independent, the people must be divested of all the privileges they have wrested from their rulers in times of anarchy and confusion. In modern times the people for the most part have these privileges arranged together in one instrument, which commonly serves as a preliminary to their constitution—this instrument, they call their bill of rights.*

*Dr. Rush, in the state convention, amongst many other wise and learned sayings, hath the following remarkable observation, "I am happy sir, to find that the convention hath not disgraced this constitution with a bill of rights"[6]—whether ought Pennsylvania to reward such candid declarations with a suit of tar and feathers, or with a hempen neck-lace.

These rights are claims which the people have extorted from weak, timid, irresolute rulers—However the grand convention in framing the new constitution, hath omitted the dangerous ceremony, and left it in the power of congress, to irradicate every vestage of so daring an encroachment. One particular article provided for in these bills of rights, is the liberty of the press, which the people pretend ought never to be restrained, altho' it is undeniable that it has ever been the vehicle of slander, and the source of innumerable evils; it hath filled the world with seditions, insurrections, rebellions, conspiracies, murders, heresies, and the most dangerous innovations of every sort; wherever it is tolerated it is impossible to divest the people of those dangerous privileges, which they have usurped in time of turbulence and disorder; through this channel they will receive early intelligence of the schemes of government, and be ready on the slightest offence, to unite in support of what they deem their natural and unalienable rights; so that it might prove difficult for the best appointed army, that congress could possibly raise or support, to repel their fury, or reduce them to obedience; but as there is no provision made for its security in the new frame of government, congress may abolish it at pleasure, which they will soon find it their interest to do, and its own native licentiousness will furnish them with reasons plausible enough to form a preamble for the act; as none but friends of government will then have an opportunity of communicating their sentiments to the public, or displaying their genius: so none but they will care to acquire sentiments, or cultivate genius. Learning will then flourish in its native soil, and science run in its proper channel; for a knowledge of letters among the vulgar is the bane of good government. Another privilege which the people possesses at present, and which the new congress will find it their interest to deprive them of, is trial by jury—for of all the powers which the people have wrested from government, this is the most absurd; it is even a gross violation of common sense, and most destructive to energy. In the first place it is absurd, that twelve ignorant plebians, should be constituted judges of a law, which passed through so many learned hands;—first a learned legislature after many learned animadversions and criticisms have enacted it—Second, learned writers have explained and commented on it.—Third, learned lawyers twisted, turned and new modeled it—and lastly, a learned judge opened up and explained it. Yet after all these learned discussions, an illiterate jury (who have scarce a right to think for themselves instead of judging for others) must determine whether it applies to the fact or not; and by their verdict the learned judge must be governed in passing sentence; and perhaps a learned gentleman be cast in an action with an insignificant cottager.

3.16.13 Secondly. Common sense recoils at the very idea of such a pernicious practice as this, because it makes no difference between the virtuous and the vicious, the precious and the vile; between those of noble birth, and illustrious descent, and those of base blood, and ignoble obscure

pedigree—for an ignorant stupid jury, cannot discern the merit of persons—it is the merits of the cause they examine; which is just reversing the question, and beginning at the wrong end. Thirdly. This custom is fatal to energy, for tho' a law should be expressed in the most pointed terms, a jury may soften and mitigate, and in a great measure destroy the spirit of it. The lawyers also suffers by this practice; because, there being no appeal from the verdict of the jury with respect to the fact—the action therefore, often ends in the same court in which it originated, but where no jury interferes an appeal lies to a higher court, where higher fees must be given to lawyers, and greater numbers of them employed; and so much better chance for them to amass fortunes.

[It appears as if some discerning lawyer indicted that nice clause in the constitution, which gives to the continental supreme court an appelate jurisdiction, both as to law and fact; it seems so happily calculated to their advantage.][7]

There are many other rights claimed by the people besides these mentioned; but as they are of little consequence, I shall leave the discussion of them to the new congress themselves, who no doubt will be quick sighted enough to discern them, and prudent enough to provide for their removal. But before I conclude, I must take notice of an incumbrance upon government, which have been more general in its operation than any yet mentioned; viz. religion. There has been but few nations in the world, where the people possessed the privilege of electing their rulers; of prefixing a bill of rights to their constitutions, enjoyed a free press, or trial by jury; but there was never a nation in the world whose government was not circumscribed by religion. It intermingled itself so much with the Jewish system, that it is difficult to distinguish between some of the functions of the magistrates and those of the priests. In some stages of their commonwealth, the high priest was also the supreme civil magistrate. Religion had also a decisive influence in the Grecian and Roman systems of jurisprudence; their augurs could in many cases put a negative on the decrees of their senates; and countermand the orders of their consuls and dictators.—In our own times, the most absolute rulers in the world, find their power abridged by religion. The grand signior possesses an authority very similar to the principle of nature which I have stated; yet his power is limitted by religion;—for wherever it interposes, the will of the sovereign must submit to its decrees: "When the koran hath prescribed any religious rite; hath enjoined any moral duty; or hath confirmed by its sanction any political maxim. The command of the sultan cannot overturn that which an higher authority hath established."[8] Even the Venetian government, which of all other seems to be formed on the best model, (though much inferior to our new plan) is nevertheless embarrassed with religion; but what need I mention particulars, since every government in the world, as I observed before, has, in a lesser or greater degree felt this inconvenience. Indeed it seems to have

3.16.14

formed an essential part of them; such a part as could not be expunged without annihilating the whole systems; and though this might have been done, yet the shallow brains of those antiquated legislators, could not devise a possibility of avoiding the same radical evil in any new system they could frame; so that this direful incumbrance has hitherto proved too powerful for the united efforts of all the legislators and philosophers that ever appeared in the world to conquer. But what is the world to the federal convention! but as the drop of a bucket, or the small dust in the balance! What the world could not accomplish from the commencement of time till now, they easily performed in a few moments, by declaring, that "no religious test shall ever be required as a qualification to any office, or public trust; under the united states." This is laying the ax to the root of the tree; whereas other nations only lopped off a few noxious branches. This is purifying the fountain; the streams must of course be pure. By this provision the convention hath prudently removed the distemper from the head, and secured it from contamination.—The certain method to preserve the members from catching the infection. Religion, is certainly attended with dangerous consequences to government: it hath been the cause of millions being slaughtered, whose lives and services might have been of use to their masters; but in a peculiar manner the christian religion, which has these several centuries past prevailed over a great part of Europe, and is professed by a great many of the vulgar in this country, is of all others the most unfavourable to a government founded upon nature; because it pretends to be of a supernatural divine origin, and therefore sets itself above nature. Its precepts are likewise so rigid and severe, as to render it impossible for any gentleman of fashion or good breeding to comply with them in any sense, without a manifest violation of decorum, and an abandonment of every genteel amusement and fashionable accomplishment; but another capital objection against this singular system of religion is, that it prohibits slavery, which is so essential to government, that it cannot exist, with any degree of energy, without it, for all the subjects of a good government ought to be slaves in a political sense; or as they were anciently termed, vassals; that is, their persons and property must be entirely at the will and disposal of their masters; which is ingeniously provided for in the new constitution, under the articles of taxation and discipline of the militia.

3.16.15 The congress must certainly extirpate from their dominions such a religion as this that is an enemy to so many good things. By this means the clergy may be annihilated,* who have always been an ambitious, aspiring

*When first I perused this construction, I expected the clergy, to a man, would have opposed it; but in this I am happily deceived; they are the most strenuous advocates it has got; this appeared to me unaccountable, that an order of men, ever jealous of their own power and interest, should favour a constitution which would eventually destroy both; but I presume they have secret assurance that one or two denominations of clergy, are to have fixed stipends established under the new constitution. This, they expect will relieve them from their state of dependance they are

and restless set of men, ever grasping at honours and distinctions, which is the unalienable prerogative of those of illustrious descent: they also by their address and cunning, gain an ascendency, and assume an authority over the people, which is only proper for the rulers to possess; but perhaps it may be urged that some sort of religion is necessary to awe the minds of the vulgar, and keep them in subjection to government. I grant, weak, feeble governments, such as our present systems, may stand in need of the visionary terrors of religion for their support; but such an energetic government as the new constitution, disdains such contemptible auxiliaries as the belief of a Deity, the immortality of the soul, or the resurrection of the body, a day of judgment, or a future state of rewards and punishments.[9] Such bug-bears as these are too distant and illusory to claim the notice of the new congress. The present state of punishments, which will be within their immediate reach to inflict, will answer the end infinitely better. But if some religion must be had, the religion of nature will certainly be preferred by a government founded upon the law of nature.—One great argument in favour of this religion is, that most of the members of the grand convention are great admirers of it; and they certainly are the best models to form our religious, as well as our civil belief on. This religion also admits of proper degrees and distinctions amongst mankind; but the other does not; for it commands to call no man upon earth master or lord. From these remarks, I think it evident, that the grand convention hath dexterously provided for the removal of every thing that hath ever opperated as a restraint upon government in any place or age of the world. But perhaps some weak heads may think that the constitution itself will be a check upon the new congress; but this I deny, for the convention has so happily worded themselves, that every part of this constitution, either bears double meaning, or no meaning at all; and if any concessions are made to the people in one place, it is effectually cancelled in another; so that in fact this constitution is much better and gives more scope to the rulers than they durst safely take if there was no constitution at all; for then the people might contend that the power was inherent in them, and that they had made some implied reserves in the original grant; but now they cannot, for every thing is expressly given away to government in this plan. Perhaps some people may think that power, which the house of

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now in. It is natural for them to wish something surer for a living, than the good will of the people, their hearers. It is very well to amuse them with such alluring stories as these, while their services is needed. Working on their avarice and ambition is the sure way to engage them; and when the constitution is once established, and they have no more useful, but rather hurtful, sound policy will dictate evasions plausible enough to disengage gentlemen from the accomplishment of their promise; and the most noisy and dangerous of them, may have their mouths stopped, by bestowing sinecures on them in the civil, military, or naval department: such as the collector of taxes, excise, or impost duties: this will suit them better than their present employments; for preaching is a great restraint upon gentlemen of modern morality.

representatives possesses, of impeaching the officers of government will be a restraint upon them; but this entirely vanishes, when it is considered that the senate hath the principal say in appointing these officers, and that they are the sole judges of all impeachments. Now it would be absurd to suppose that they would remove their own servants for performing their secret orders perhaps. For the interest of rulers and the ruled will then be two distinct things. The mode of electing the president is another excellent regulation, most wisely calculated to render him the obsequious machine of congress. He is to be chosen by electors appointed in such manner as the state legislators shall direct: but then the highest in votes cannot be president, without he has the majority of all the electors; and if none have this majority, then the congress is to chuse president out of the five highest on the return. By this means the congress will always have the making of the president after the first election; so that if the reigning president pleases his masters, he need be under no apprehensions of being turned out for any severities used to the people, for though the congress may not have influence enough to procure him the majority of the votes of the electoral college, yet they will always be able to prevent any other from having such a majority, and to have him returned among the five highest, so that they may have the appointing of him themselves.

3.16.16 All these wise regulations, proves to a demonstration, that the grand convention was infaliable. The congress having thus disentangled themselves from all popular checks and choices; and being supported by a well disciplined army and active militia, will certainly command dread and respect abroad, obedience and submission at home; they will then look down with awful dignity and tremendous majesty from the pinnacle of glory, to which fortune has raised them upon the insignificant creatures, their subjects, whom they have reduced to that state of vassalage and servile submission, for which they were primarily destined by nature. America will then be great amongst the nations* and princess amongst the provinces: her fleets will cover the desarts of the ocean and convert it into a popular city; and her invincible armies overturn the thrones of princes. The glory of Britain** shall fall like lightning before puissant America; when she ariseth to shake

*That is if we may credit the prognostications with which our federal news-papers and pamphlets daily teem.

**Britain, once the supreme ruler of this country, but her authority was rejected; not as a great many believe, because her claims was tyrannical and oppressive; but because her dominion excluded those from monopolizing the government into their own hands, whom nature had qualified to rule. It is certainly no more than the natural right of rulers "to bind their subjects, in all cases whatsoever."[10] This power is perfectly synonimous with that clause in the constitution, which invests congress with power to make all laws ["]which shall be necessary and proper for carrying into execution the foregoing powers and all other powers," etc. and that which says "the constitution, laws, and treaties of congress shall be the supreme law of the land; any thing in the constitutions or laws of any of the states to the contrary notwithstanding." But nothing less would satisfy Britain, than a power to bind the natural rulers as well as subjects.

the nations, and take vengeance on all who dare oppose her. O! thou most venerable and august congress! with what astonishing ideas my mind is ravished! when I contemplate thy rising grandeur, and anticipate thy future glory! Happy thy servants! happy thy vassals! and happy thy slaves, which sit under the shade of thy omnipotent authority, and behold the glory of thy majesty! for such a state who would not part with ideal blessings of liberty? who would not chearfully resign the nominal advantages of freedom? the dazzling splendour of Assyrian, Persian, Macedonian and Roman greatness will then be totally eclipsed by the radient blaze of this glorious western luminary! These beautiful expressions, aristocracy, oligarchy, upon which the popular odium hath fixed derision and contempt, will then resume their natural emphasis; their genuine significance will be perfectly understood, and no more perverted or abused.

I shall now suggest a few directions to my worthy friends, the inventors and advocates of this admirable constitution—1st. that the people may be brought speedily to "assent and ratify" this constitution, they must have very short time given them for consideration;* it may take well enough with them while they know it only by report, but if time and leasure is allowed them to examine it, they will surely reject it. 2dly. everything like argument in its defence must be carefully avoided, and instead thereof, the profound wisdom of the convention, the great men of which it was composed, particularly the names of a Washington and a Franklin, must be rung in the people's ears: it must be declared a crime bordering on blasphemy, to say any thing against the production of such men as these, and if any thing is wrote concerning it, it must be panegyrick, eulogium, or rhapsody; but by all means avoid reasoning, or you will betray the good cause in which you are engaged. 3rdly. All who presume to speak or write against this constitution, must be branded as enemies to their country and to the union of the states; to impress this upon the minds of the vulgar, they must be termed antifederalists,** all their personal faults must be searched out and exposed; 3.16.17

*Our friends in Pennsylvania and some other states, have wisely anticipated this advice, and thereby carried their favourite scheme. But I am sorry to find that Virginia and several other states have given too much time for the plebeians to scrutinize and cavil; which may perhaps disconcert the whole plot, so artfully contrived.

**I hope none of my friends will imagine that I wish for federal union, because I have called the new plan of government the FEDERAL CONSTITUTION. I assure my friends (by whose interest I expect to receive my share of the loaves and fishes when they are dividing after the constitution is established) I abhor every idea of a federal union; I am decidedly for an incorporate or consolidated union; and I am sensible that this sort of union is effectually secured by the new constitution, the only system capable to exalt the rulers and reduce people; but I have applyed the word federal to the constitution, to chagrin the vulgar, who are enthusiastically fond of it; and as few of them are capable to distinguish betwixt the name and the thing, they may be brought to addopt it under this plausible sanction; also by calling the constitution federal, we can apply the odious term antifederalists to our opponents with more propriety.

and the people must be warned not to listen to their reasoning on the subject, as they are interested persons, being either officers of government, or expectants of offices, and that their opposition arises from sinister views, and selfish motives, and not from a conviction of its evil: but beware of encountering their arguments, or you will certainly expose this darling constitution to popular execration. 4thly. The people must be told, that the revenue of the nation will be chiefly raised by impost under the new constitution, and that internal taxation will seldom if ever be recurred to; this will amuse them in the mean time while they possess the power, but we hope congress will have more wisdom than to verify this prophecy, as it would be very injurious to the interest of our well beloved brother Robert Morris, and all our brethren in high life throughout the nation: a land, but in particular a high poll-tax, will be the most effectual method of collecting the finances; some other articles, such as stamp duties; a tax on candles, leather, soap, etc. may turn to a very good account; and the money raised from the sale of the active militia to foreigners, will be no contemptable source of revenue. 5thly. All communication between the people of the different states must as much as possible be prevented—therefore our own friends must be posts and postmasters, and they must have full power to break open all packets, letters, and papers of every sort, and if they contain any thing against the new constitution they must be suppressed, if not closed up again and sent to the persons to whom they are directed; and it is requested of all our trusty friends throughout the country, that they intercept all papers, which come in their way; examine their contents, and if possible destroy them, if they contain any thing against this glorious plan. 6thly. [11] The militia must be disarmed; for this purpose all the public arms must be called in, upon pretence of having them cleaned; this will not only deprive our enemies of using them against us, but they will be ready to put in the hands of our friends, or men raised by them for the establishment of the constitution if coercion is necessary. 7thly. The distress of the people must be magnified as much as possible; they must be told that they are ruined and miserable, that they are all bankrupts; and that all these calamities is occasioned by their feeble governments (although in fact it is by their own extravagance); and that the new plan will effectually relieve all their wants, and redress all their grievances; although in reality it must be their own industry and economy; but this they must not know for the present. 8thly. They must be told that the new congress will immediately pay off all the debts of the union; but if they ask you how? you must evade the question the best way you can; for if you tell them the truth, that it will be by levying high taxes on themselves, they will be sure to spurn your argument and constitution too. 9thly. The highly and elevated station, to which this will raise America amongst the nations, must be held forth with great vehemence. The people are mighty fond of pomp and splendor, and will almost grant anything to raise their country to grandeur and magnificence. 10thly. They must

be told that anarchy will inevitably be the consequence, if they reject the proposed plan; for there are no more wise men on the continent capable to frame another system; and the same men which composed the late grand convention will not meet a second time. Finally, these directions, if strictly observed, may be of great utility; but they are not to be implicitly confided in. Standing armies are the most proper instruments, both for maintaining and establishing a good government; therefore to secure all beyond a doubt, a standing army must be speedily provided; for this purpose application must be made to our good ally, the French king, to furnish us with a number of troops; and so as not to alarm the people too soon, they may be landed with a pretence to invade Canada. His majesty must also be instructed to demand troops of congress, to assist in this expedition, according to the treaty of alliance. Ten or twenty thousand could be raised in a thrice; and I am confident our friend Robert, and all our other monied friends, bankers and brokers, will supply the necessary demands of money, they may easily be got ready to take the field against next summer, or fall. It could be no loss if they were not needed, they would be so many ready made soldiers for the new congress, who would, no doubt, purchase them at a high price, and the French troops might return in peace to their own country.

APPENDIX

Since writing the foregoing strictures, I have seen Martin's information to the house of delegates of the state of Maryland.[12] This arch enemy has let out secrets that certainly never was intended to be discovered; he hath with uncommon audacity, deserted the great convention, and exposed its intestines to public view; yet I cannot think he has destroyed its infaliability; all he has told, only proves that the majority were no patriots, nor lovers of their country; and what of all that; we can prove they were lovers of themselves; and that self-love is the noblest passion of the soul, and the best motive that human actions can spring from. Now if the grand convention acted uniformly from the best motive, self-love, were stimulated by the noblest desires, self-agrandisement, and influenced by the choicest principles, self-preservation, there can be no doubt of their infaliability. This truth being established, it necessarily follows, that it is gross prophanity and unpardonable crime for faliable creatures to presume to scrutinize their work, or arraign their production, before the bar of their corrupt depraved reason. The centinel in his 16th number,[13] has also discovered a secret of some importance; viz. that the expost facto clause, in connection with several others, screens, what he calls public defaulters, from being obliged to refund the millions they owe the public, and secure the delinquent states from being called upon for their arrears due to the continental treasury! How this fiend discovered the intention of this important clause I cannot

3.16.18

divine. It was veiled over so nicely with a semblance of liberty, that I expected it would ride its quarantine without being observed: but nothing can escape the penetrating eye of this wicked centinel. I wish some means were devised to silence him.—Money, and the promise of lucrative offices has a fascinating influence; and has hitherto been of great service to our cause; many have been bought off whose opposition would certainly have injured us. I wish every stratagem were tried of this nature to allure the centinel to join us, or at least to be silent: he has done great mischief, and is still doing more; and he seems to possess such a determined spirit as not to be intimidated by threats. The people seem very much alarmed at the tendency of the expost facto clause.

3.16.19 Several of the Philadelphia papers teem with pieces exposing the principal public defaulters; but I hope the present Congress will not be induced by this to commit such a piece of cruelty, as to call them to account, and oblige them to refund the sums they owe. If, they postpone it till the new government is established, they can then settle them decently without any injury to themselves: nor can the public complain of fraud or injustice done them, since they have tacitly given their consent to it, by ratifying the new constitution. The provision made in the constitution for cancelling the public debts, was certainly dictated by the first principle of nature, viz. self-preservation; the most influential members in the convention being public defaulters, were impelled to take this step for their own security; and who in their senses can blame them for providing for their own safety, when it was in their power. I am happy to find that the system of intrigue and chicane on which our whole scheme was founded, is still carried on with success all over the continent. The directions I have suggested has been anticipated I find by our friends; by this means six conventions have been lugged in to adopt the plan;—although I don't like the idea of amendments which Massachusetts has introduced; it may be attended with bad consequences; other states may follow the example, and so spoil the whole plot; that such a fatal catastrophe may be prevented, we ought to employ our whole skill, and bend our whole manoeuvres. The adjournment of New Hampshire Convention, is very alarming; yet I hope that state may be brought to reason: a few donations might answer a good end. I long for the asset of nine states; we could then settle all disputes by applying the ultimo ratio regum, as General Washington expresses it,[14] this is the most effectual mode of reasoning; may we speedily have it in our power.

Finis.

1. The source of this epigraph has not been found.
2. Proverbs 8:1.
3. Cf. the comments by Oliver Ellsworth in the Connecticut ratifying convention, Elliot II, 191.

4. This point, like the previous one, is headed "3dly" in the original, presumably a printer's error.

5. Brackets in original.

6. "Sir, I consider it as an honor to the late convention, that this system has not been disgraced with a bill of rights; though I mean not to blame or reflect upon those states which have encumbered the constitution with that idle and superfluous instrument. One would imagine, however, from the arguments of the opposition, that this government was immediately to be administered by foreigners—strangers to our habits and opinions, and unconnected with our interests and prosperity. These apprehensions, Sir, might have been excused while we were contending with Great Britain; but at this time they are applicable to all governments, as well as that under consideration; and the arguments of the honorable member are, indeed, better calculated for an Indian council-fire than the meridian of this refined and enlightened convention" (30 November 1787). McMaster and Stone 295. Rush's argument is that security for the people is to be found not in written agreements but in an adequate representation and a balance in the legislative body. For other Federalist arguments against a bill of rights see Mason 2.2.1 n. 1; [*Maryland*] *Farmer* II, 5.1.18 n. 12.

7. Brackets in original. See Democratic Federalist 3.5.6 n. 6.

8. The source of this quotation has not been found.

9. Cf. George Washington, "Farewell Address," Washington, *Writings* XXXV, 229–30; letter from James Madison to Thomas Jefferson, 24 October 1787, Madison, *Writings* (ed. Hunt) V, 17–41. For other Anti-Federalist and Federalist discussions of religion see Turner 4.18.2 n. 2.

10. This is of course the language of the Declaratory Act of 1766. On American glory see Henry 5.16.2 n. 11.

11. This point, like the previous one, is headed "5thly" in the original; presumably this was a printer's error and I have renumbered this and the remaining points.

12. See Martin 2.4.

13. See Centinel XVI, 2.7.167–70.

14. For a full discussion of Washington's remarks see An American 4.20.2 n. 2.

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